

Re: General KPDES Permits for Concentrated
Animal Feeding Operations
KPDES Permit Nos.: KYA1, KYA2, KYA3, and
KYA4

Dear Commentor:

Your comments concerning the above-referenced draft permits have been reviewed and a response prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) Regulation 401 KAR 5:075, Section 12.

Please see the enclosed document, which includes all of the comments received and all of the responses to those comments.

Any person aggrieved by the issuance of a permit final decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Natural Resources and Environmental Protection Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding this response, please contact the KPDES Branch at (502) 564-3410.

Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,

Jack A. Wilson, Director
Division of Water

JAW:RBS:tw

Kentucky Natural Resources and Environmental Protection Cabinet
Division of Water, KPDES Branch
Response to Comments Regarding Draft General Permits for
Concentrated Animal Feeding Operations

(1) Subject: Statutory Authority

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

KRS 224.70 prohibits direct or indirect discharge of any pollutant or substance that would cause or contribute to pollution. This prohibition is broad enough to cover both point and non-point source discharges onto land which drains into water and which would cause an exceedance of water quality standards, since those standards apply to all sources of pollution, as was recognized in the state Agriculture Water Quality Plan. Additionally, a mandate to prevent pollution arises under the KPDES program. The prevention of nuisance associated with the placement of water material through land application of wastes and solids in wastewater must conform to the environmental performance standards of 401 KAR Chapters 47 and 48. Against the backdrop of a clear statutory mandate for protection of the land, air, and water resources from pollution, it is clear that the permanent regulation must go beyond the emergency regulation.

(b) Response: We believe the Cabinet has appropriately exercised its statutory mandate in promulgating this administrative regulation. It should be noted that CAFOs are considered point source discharges under the Clean Water Act. The statutory definition of “Solid Waste” (KRS 224.01-010(31)(a)) specifically exempts “... manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners ...” The environmental performance standards of 401 KAR 47:030 apply to solid waste sites or facilities. Therefore, a site where manure and crop residue are applied to the land as a fertilizer or soil conditioner is not subject to the environmental performance standards, since it would not be a solid waste site or facility. The Cabinet acknowledges that manure may be land-applied in such amounts that it would cease to be fertilizer or soil conditioner. The proposed administrative regulation addresses this possibility by imposing siting criteria. The KPDES program also addresses this possibility by requiring Comprehensive Nutrient Management Plans. These requirements are as a practical matter equally effective as the environmental performance standards of 401 KAR 47:030.

(2) Subject: Statutory Authority

(a) Comment: Todd Wright, Tyson Foods, Inc.

During the development stage of this permit, were the requirements outlined in KRS 224.16-050(4) taken into consideration and if so, what rationale was used to determine compliance?

(b) Response: Pursuant to the statute, the Cabinet shall not impose under any KPDES permit issued any effluent limitation, monitoring requirement, or other condition which is more stringent than the effluent limitation, monitoring requirement, or other condition which would have been applicable under federal regulation if the permit were issued by the federal government. We believe the agency has complied with this requirement by following the effluent limitations, monitoring requirements and other conditions set forth in the unified national strategy, which interprets an existing federal CAFO regulation.

(3) **Subject: Court Decisions**

(a) **Comment:** W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club

Last year, the U.S. District court found dairies with 5,250 dairy cows to be CAFOs and were strictly liable for violations of the Clean Water Act. In North Carolina, a U.S. District Judge found that Murphy Farms, as the operator, was a CAFO along with the actual farm owner. The U.S. Court of appeals made it clear that a point source that uses land application to dispose of waste can be regulated as part of the NPDES requirement, holding: “the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silviculture, and storm water runoff point sources.” The Georgia Supreme Court recently ruled in favor of residential property owners within one half mile of a proposed swine feeding operation, to prohibit the construction. This supports the finding that setbacks are needed to prevent nuisance.

(b) **Response:** The Cabinet is aware of these court decisions, however the issue of whether these operations constitute a nuisance is separate from the Cabinet’s administrative regulations.

(4) **Subject: Stricter than Federal Mandate**

(a) **Comment:** Todd Wright, Complex Environmental Manager, Tyson Foods
Kimberly Boswell, Poultry Farmer, Nurse
Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture
Bill Payne, Dairy Producer, Kentucky Milk Producer’s Association
Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Dennis O. Liptrap, IPKY, Inc.
Meldrum Harvey, Retired Physician & Farmer
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Mike Brawner, Farmer
Lloyd R. Cress, Attorney, Cagle’s-Keystone Foods, LLC
Spence Jarnigan, General Manager, ConAgra Poultry Company
Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.

The Regulatory Impact Analysis states that this administrative regulation will not impose stricter requirements or additional otherwise different responsibilities or requirements from those required by the federal mandate based on the March 9, 1999 USDA USEPA *Unified National Strategy for Animal Feeding Operations*. This document is nothing more than a planning document and it has not been incorporated into the Codified Federal Register, therefore cannot be used to satisfy the statutory requirements for regulations to be stricter than the federal government nor can it be used to satisfy the federal requirement that state regulations be at least as stringent as the federal requirement. The Commonwealth of Kentucky should not take any action until the USEPA has resolved this issue at the national level. Action by the state will place our animal production industry at a disadvantage when competing with the other states in the same type of production. Kentucky should not fight the costly lawsuits for EPA. Authority vested in state law or federal law is the only authority that can be defended in court. State regulations stricter than federal requirements are prohibited under KRS 224.16-050 and place our Kentucky producers on an unfair playing field.

(b) **Response:** EPA frequently publishes many guidance documents pursuant to the federal Clean Water Act, and has done so with the publication of the U.S. Department of Agriculture/U.S. Environmental Protection Agency *Unified National Strategy for Animal Feeding Operation*, March 9, 1999. Clean Water Act, 33 U.S.C.A § 1314. The strategy notes at Section 1.11 that it is not a new regulation nor is it a substitute for existing federal regulations and does not impose any binding requirements on USDA, EPA and the states. It sets forth EPA's interpretation of its currently existing law, which is the law of the land and has been the law of the land for quite some time.

In the USDA/USEPA *Unified National Strategy for Animal Feeding Operations* issued March 9, 1999, EPA had this to say about integrator liability:

EPA believes that corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO owner/operator and will clarify this in CAFO permit guidance.
Strategic Issue No. 3 1.C.

In addition, in the *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations* issued August 6, 1999, EPA stated the following:

Corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO operator. Corporate entities that exercise such operational control over a CAFO are considered "operators" of the CAFO under the Clean Water Act (CWA).
Id. at Section 2.4.

As we read the *Guidance Manual*, EPA is requiring integrator liability because it considers integrators to be "owners" or "operators." EPA interprets its current regulations as creating liability for the integrator and the CAFO regulation in that regard is not more stringent than federal law.

The federal Clean Water Act itself does not define "owner" or "operator." However, the federal regulation, found at 40 CFR Section 122.2, does contain broad definitions of the terms "owner" and "operator." It is the position of EPA that persons who direct the activities of persons working at the CAFO either through contact or direct supervision or on-site participation in the facility, or who own the animals, or who specify how the animals are grown fed, or medicated, meet the definitions of "owner" and "operator" and therefore must apply for a CAFO permit. See, *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations* August 6, 1999, Section 2.4.

The Commonwealth of Kentucky administers the federal NPDES program pursuant to KRS 224.16-050(1). Most of the Cabinet's administrative regulations are taken directly from the Code of Federal Regulations and placed into the *Kentucky Administrative Regulations* with minor wording changes made only to accommodate KRS Chapter 13A. This is the authority delegated to the Cabinet pursuant to the federal Clean Water Act. This is a federal program and the Commonwealth must follow EPA's lead in this matter. The definitions of "owner" and "operator" that appear in 40 CFR Section 122.2 are as follows: "'Owner' or 'operator' means the owner or operator of any 'facility or activity' subject to regulation under the NPDES program." Kentucky's administrative regulations follow this definition. 401 KAR 5:002, Section 1(175) defines "operator" as: "Any persons involved in the operation of a facility or activity."

This regulation is not issued only pursuant to the federal Clean Water Act. The regulation is issued pursuant to KRS 224.70-100 and 224.70-110 which give the Cabinet authority to regulate water pollution. The regulation is also issued pursuant to the Cabinet's authority under KRS 224.20-110 and 224.20-120, which give the Cabinet authority to regulate air pollution, and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems. It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet may issue permits for construction of sewage systems. The Cabinet, therefore, has authority beyond the federal Clean Water Act to issue this regulation, and the regulation does not relate to federal NPDES permits alone. Since the regulation is not solely based on the Cabinet's authority under the Clean Water Act, the issue of whether or not it is "more stringent than" the Clean Water Act is not germane. The Cabinet has authority to control and regulate these facilities, apart from the federal Clean Water Act.

CAFOs are clearly defined in federal law as KPDES "point sources." 33 U.S.C. Section 1362 defines "point source" as follows:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharge and returns flows for irrigated agriculture.
33 U.S.C. Section 1362(14) (emphasis added).

A CAFO meets the definition of point source. Congress did not define "concentrated animal feeding operations," but EPA has done so in the Code of Federal Regulations. Any operation that meets that definition is a "point source." It thus becomes a facility or activity regulated by the CWA. EPA considers anyone who owns animals at a CAFO or provides operational direction at the CAFO to be the owner or operator of the CAFO.

(5) Subject: Stricter than Federal Mandate

- (a) **Comment:** Todd Wright, Complex Environmental Manager, Tyson Foods
Kimberly Boswell, Poultry Farmer, Nurse
Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture
Bill Payne, Dairy Producer, Kentucky Milk Producer's Association
Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Dennis O. Liptrap, IPKY, Inc.
Meldrum Harvey, Retired Physician & Farmer
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Mike Brawner, Farmer
Lloyd R. Cress, Attorney, Cagle's-Keystone Foods, LLC
Spence Jarnigan, General Manager, ConAgra Poultry Company
Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.

The legal status of co-permitting or integrator liability is unclear. The federal NPDES program has limited the obligations under the program to a universe of persons that does not include integrators; the operator is

responsible for obtaining a permit and complying with it when ownership and operation are split. The regulation is unlawful because it requires persons who are neither owners nor operators to be co-permittees on the permit and to be jointly and severally liable for violations. EPA intends the person with operational control over the facility to be the one required to submit a permit application. The Commonwealth of Kentucky should not take any action until the USEPA has resolved this issue at the national level. Action by the state will place our animal production industry at a disadvantage when competing with the other states in the same type of production. Kentucky should not fight the costly lawsuits for EPA. State regulations stricter than federal requirements are prohibited under KRS 224.16-050 and place our Kentucky producers on an unfair playing field.

(b) **Response:** See response to comment # 4.

(6) **Subject: Stricter than Federal Mandate**

(a) **Comment:** Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.

The regulation is unlawful because it attempts to regulate the land application of waste in contravention to the express recognition in the Clean Water Act and the federal regulations providing that cultivated crop areas are non-point sources not subject to permitting requirements under the Clean Water Act. The Cabinet has no other source of authority for regulation of land application.

(b) **Response:** Concentrated Animal Feeding Operations are considered point sources pursuant to 33 USC Section 1362. See response to comments #4.

(7) **Subject: Stricter than Federal Mandate**

(a) **Comment:** Spence Jarnagin, General Manager, ConAgra Poultry Company

No operation may be designated a CAFO on a case-by-case basis until the permitting authority has conducted an on-site inspection of the facility and determined it to be an actual or potential significant contributor of pollutants to waters of the U.S., regardless of the size of the operation or type of animals confined. 40 CFR 122.23(c)(3).

(b) **Response:** The agency has conducted a statewide survey (ongoing) for animal feeding operations. In addition, during the course of permit issuance the agency will evaluate each operation on its own merits.

(8) **Subject: Stricter than Federal Mandate**

(a) **Comment:** Tony Sholar, Vice President for Public Affairs, Kentucky Chamber of Commerce
Roger Osburn, Chicken Grower
Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Lloyd R. Cress, Attorney, Cagle's-Keystone Foods, LLC
Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.
Spence Jarnagin, General Manager, ConAgra Poultry Company
Ronnie Bloecher, Poultry Farmer
Mark Reding, Kentucky Pork Producers Association

The NOI to promulgate 401 KAR 5:072 violates one of the basic principles of the KPDES program; that state issued permits contain no term or condition stricter than federally issued NPDES permits.

The federal NPDES permit program is limited to the regulation of discharges, not facility construction and siting, and under 224.16-050, the permit program is similarly restricted. Neither federal statute nor regulation allows NREPC to use point-source water quality permits to regulate odor/air quality, construction, siting or setback of facilities. These issues must be addressed by utilizing authority other than the KPDES permit program or by deferring action until such requirements are added to the federal NPDES program or it will lead to extensive litigation, legal failure, and further delays in addressing those issues.

Response: See response to comments #4.

(9) Subject: Stricter than Federal Mandate

- (a) **Comment:** Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.
Spence Jarnagin, General Manager, ConAgra Poultry Company
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

The Clean Water Act does not require KPDES permits for facilities unless they are point sources that discharge pollutants into navigable waters. The Cabinet has given no effect to the qualifying language relating to overflow watering and liquid manure systems. While Kentucky may meet the numerical portion of the CAFO definition, the facilities do not discharge pollutants into navigable waters within the meaning of the statutes because their dry litter systems do not result in such discharges. These facilities do not contain the “retention structures” referred to in the draft general permit effluent limitations and monitoring requirements, which necessarily implies the use of a wet system that is a point source, i.e. a “discernible, confined and discrete conveyance, ..., from which pollutants are or may be discharged.”

Response: See response to comment # 4.

In addition, in the USDA/USEPA’s *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations*, August 6, 1999, the EPA at Section 2.3.2 notes that poultry operations that remove dry litter waste from pens and stack it in areas exposed to rainfall are considered to have established a crude liquid manure system.

(10) Subject: Stricter than Federal Mandate

- (a) **Comment:** Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.

By including setback requirements and land application conditions and restrictions, including the requirement for a CNMP, the proposed permit impermissibly attempts to regulate nonpoint sources through this permit in direct contravention of the agricultural storm water exemption contained in Section

502(14) of the Clean Water Act. While Perdue and Tyson support and encourage the use of BMPs for land application of wastes, those programs were purported to be established pursuant to Section 319 of the Clean Water Act (CWA) which governs nonpoint source management programs. By requiring these nonpoint source BMPs to be conditions of a general KPDES permit that can only apply to point sources, the Cabinet reads the CWA as treating any agricultural activity as relating to a point source that can be subjected to stringent permit conditions. There is no legal basis for such an extraordinary and broad interpretation of the CWA. Therefore, the Cabinet must remove all references to conditions on nonpoint source activities in order for this general permit to comport with the provisions of the CWA.

(b) **Response:** See response to comment #4.

(11) Subject: Stricter than Federal Mandate

(a) **Comment:** Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Neither federal nor state government considers “any runoff” from land application of agricultural chemicals or organic waste a point-source. Therefore, the Cabinet may not place any nonpoint source requirements on other nonpoint source areas adjoining a CAFO. We recommend that the Cabinet remove or modify its “prevent any runoff” requirement in the KPDES permit for CAFOs.

(b) **Response:** The Federal EPA considers the land application areas controlled by the CAFO, to be a part of the CAFO and therefore subject to the requirements of the KDPEs permit. With respect to non-point source runoff, degradation to waters of the Commonwealth is prohibited.

(12) Subject: Stricter than Federal Mandate

(a) **Comment:** Marshall Coyle, Kentucky Farm Bureau

The Federal Government does not require any form of contractual liability for their permits to be issued. Neither federal statute nor regulation instructs, requires, or even mentions contractual liability.

(b) **Response:** See response to comment #4.

(13) Subject: Stricter than Federal Mandate

(a) **Comment:** Lloyd R. Cress, Attorney for Cagle’s-Keystone Foods

State issued KPDES permits can impose no more stringent requirements than would a federally issued NPDES permit. Cagle’s-Keystone strongly opposes the issuance of the draft general KPDES permit for poultry CAFOs because it is unreasonable and in conflict with state and federal laws and regulations. The federal strategy is to be implemented by states in accordance with a USEPA permitting guidance document that is scheduled to be released within the next several months. USDA has taken no steps to give regulatory effect to the comprehensive nutrient management plans (CNMPs) and is not expected to issue its guidance until mid summer. It is unreasonable for the Division of Water to issue a general KPDES permit for poultry CAFOs at this time in view of the impending issuance of guidance documents by federal agencies. The draft permit contains terms and conditions based upon 401 KAR 5:072E which has not been approved as a part of Kentucky’s KPDES permit program as required by 40 CFR Part 123.

(b) **Response:** See response to comment #4.

(14) Subject: Stricter than Federal Mandate

(a) **Comment:** Lloyd R. Cress, Attorney for Cagle's-Keystone Foods
Carole Knoblett, Kentucky Poultry Federation
Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.

The draft permit purports to authorize the Division of Water, in its discretion, to regulate as CAFOs poultry operations with less than 100,000 hens and/or broilers and/or facilities which discharge only during a 25-year, 24-hour rainfall event, when such operations are not within the definition of a CAFO in 401 KAR 5:002 and/or 40 CFR Part 122, Appendix B. This is a violation of KRS 13A and 224. On what basis does the Division of Water intend to exercise that discretion?

(b) **Response:** The Division of Water may classify any AFO as a CAFO upon determining that it is a significant contributor of pollution to the waters of the Commonwealth consistent with 401 KAR 5:060, Section 10 (2). This is a requirement of both the state and federal NPDES regulations.

(15) Subject: Public Hearings

(a) **Comment:** Dennis Liptrap, Swine Farmer

I resent having to attend numerous public hearings regarding the same issue.

(b) **Response:** Multiple hearings were held in order that all who wanted to attend would have the opportunity to do so. In addition, the hearings have been held pursuant to the requirements of KRS Chapter 13A.

(16) Subject: Applicability

(a) **Comment:** Mark Redding, President, Kentucky Pork Producers Association

Are existing producers who are currently permitted with a KNDOP permit grandfathered in or are they required to obtain a KPDES permit? If existing producers are required to obtain a KPDES permit, are they required to be subject to a public hearing for the permit? If so, why?

(b) **Response:** All CAFOs must be permitted under the KPDES permit program. An operation currently permitted under 401 KAR 5:005, Kentucky No Discharge Operational Permit (KNDOP), that is defined as a CAFO, will have that permit inactivated once permitted under the KPDES program. A CAFO (new, existing, expanding) with greater than 1500 animal units will be required to obtain an individual KPDES permit. All individual KPDES permits are subject to public notice, and could also have a public hearing associated with that permit pursuant to both federal and state regulations. All other CAFOs will be permitted under one of the KPDES general permits at issue in this action, and are not subject to public notice or public hearing. The threshold of 1500 animal units was a decision made by the Cabinet.

(17) Subject: Applicability

- (a) **Comment:** Mark Reding, President, Kentucky Pork Producers Association

Animal facilities are fundamentally different from wastewater treatment plants for which the KPDES permitting system and regulations were developed. KPDES permits are an inappropriate regulatory device for CAFOs. There is no indication that any water quality problems in Kentucky can be solved by issuing KPDES permits to CAFOs.

(b) **Response:** We agree that animal waste facilities are fundamentally different from wastewater treatment plants. However, KPDES permits are required by federal law for operations defined as CAFOs. In addition, the *1998 Kentucky Report to Congress on Water Quality* provides the Division of Water's most recent assessment of water quality conditions and trends. Agriculture continues to be a significant source of nonsupport of beneficial waterbody use. For those waters assessed in the 1998 report, agricultural nonpoint source pollution was the attributed cause of nonsupport in 984 miles of streams and 5,582 acres of lakes in Kentucky. By issuing KPDES permits to CAFOs this source of stream impairment can be better controlled.

(18) Subject: Applicability

- (a) **Comment:** Kimberly Boswell, Poultry Farmer, Nurse

If I raise less than 100,000 birds, am I required to get a permit?

(b) **Response:** No, pursuant to regulations in effect currently, unless specifically identified as a contributor to a water quality problem. See also response to comment #14 & 19.

(19) Subject: Applicability

- (a) **Comment:** Charles Mann, President, Citizens Deposit Bank, Calhoun, Kentucky

If I don't have a continuing overflow water system or a liquid manure system, how many birds can I raise before I become a CAFO?

(b) **Response:** When a poultry AFO reaches 100,000 birds, it will be considered a CAFO.

(20) Subject: Applicability

- (a) **Comment:** Charles Miller

We were told early on that there were no beef cattle facilities in the state that would warrant being designated as a CAFO. But, under the effluent limitations and monitoring requirements, beef feeding operations with less than 1,000 animal units may be classified as a CAFO at the discretion of the Agency.

(b) **Response:** The Cabinet had previously indicated that we were unaware of any beef feeding operations of over 1,000 animal units existing in Kentucky that would be a CAFO. This was based on information available to the Cabinet at that time. Any AFO can be designated as a CAFO if water quality problems are present pursuant to federal and state regulations. The agency is not aware of any such operations at this time. Those would have to be evaluated on a case-by-case basis.

(21) Subject: Applicability

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Setbacks for land application areas are beyond the scope and applicability of KPDES permits because non-point source runoff from crops and pastures is specifically excluded from KPDES permitting in 401 KAR 5:055, Section 1(2)(e).

(b) **Response:** Discharges from CAFOs are not excluded from KPDES permitting, consistent with 401 KAR 5:055, Section 1(2)(e). See also response to comments #4 to 11.

(22) Subject: Common Ownership

(a) **Comment:** Dennis Liptrap, IPKY

Adjacent operations with common ownership should not automatically be considered one for calculation of animal units. Units which do not share common waste facilities or land application areas are separate entities from their potential to cause environmental harm.

(b) **Response:** To prevent large facilities from separating their operations and thereby bypassing the regulations, adjacent operations with common ownership must be considered one operation for the purpose of determining permit applicability. Operations which share common waste facilities and/or land application areas are considered one operation under federal and state regulations.

(23) Subject: Common Ownership

(a) **Comment:** Hank Graddy, Attorney, Sierra Club

The Sierra Club supports the common ownership requirement as consistent with the Strategy and Guidance.

(b) **Response:** The Cabinet notes the support.

(24) Subject: Threat to Environment and Public Health

(a) **Comment:** Loraine Buckingham, Resident & Poultry Farmer

There are a lot of groundwater concerns. Nature is a great purifier. If you are truly concerned about your water supply, contact your local health department to test your water. Has someone found evidence of groundwater contamination as a result of poultry barns?

(b) **Response:** Proposed siting criteria in combination with an appropriate general or individual KPDES permit is intended to protect groundwater resources.

(25) Subject: Threat to Environment and Public Health

(a) **Comment:** Corrine Whitehead, Coalition for Health Concern

The management of manure by requiring sewage treatment facilities comparable to that of cities must be required. The use of antibiotics, steroids, medications, and vaccination materials for cholera, septicemia, and other animal sicknesses must not be allowed to contaminate our water wells, lakes and rivers. The illnesses now resistant to well known antibiotics is attributed to the use of those medications in hog and chicken factories by researchers. Humans are now left with almost no workable antibiotics.

(b) **Response:** The Cabinet disagrees that a conventional municipal “wastewater treatment plant” should be mandated for manure management. The permits require no discharge of process wastewater, which is inclusive of those constituents listed in the comment.

(26) Subject: Threat to Environment and Public Health

(a) **Comment:** Norma Caine

We must have strong regulations to protect residents and the environment. We cannot rely on self monitoring or verbal agreements. In 1997, 24 chicken houses were built around our home, the closest set of eight just 278 feet from our back door, causing me stress and health problems. The 24 houses are in flood prone areas and are approximately 1,000 feet from the Webster County Water Treatment Plant, and less than one mile from its supply wells and the Green River.

My home is full of dust from feed and chicken trucks and the smell of spreading manure. The houses attract flies, rats, buzzards, wild dogs, opossums, and snakes. We are no longer able to enjoy outdoor activities for the breathtaking odor. My husband now has to use an inhaler on a daily basis and I have developed allergies that only flare up when they move chickens out. Our window screens are covered with feathers and swarming flies. I’ve seen dead chickens piled upon each other and laying on the ground in trenches that carry run off to our creeks. Stockpiles of manure are left exposed to the weather, allowing leachate to run off. Tarping the exposed stockpiles would help. Most of the work in chicken houses is done at night, keeping neighbors awake.

Drainage ditches have been cut to carry all runoff from the chicken house sites to the Green River. There are several small old gravel pit lakes near the chicken house operation. Local people fish at these lakes. Areas in and around these lakes would be classified as a wetland, as documented by the U.S. Army Corps of Engineers. Setbacks and integrator liability are needed and must be enforced. Non process wastewater must be addressed.

Laboratory analyses results showed the following:

- (1) UT - Pitman Creek at B.D. Luck Road: Ammonia - Nitrogen 19.8 mg/L, Total Kjeldhal Nitrogen 40.4 mg/L, Nitrate 0.043 mg/L, Phosphorus, total 20.1 mg/L;
- (2) In woods on East side of road at driveway: Fecal Coliform 1,960 / 100 ml, Ammonia Nitrogen as N 3.75 mg/L;
- (3) By Onton #3, ditch at road: Fecal Coliform 965 / 100 ml, Ammonia Nitrogen as N 3.13 mg/L;

Runoff from wash house on hill (This runs into my ditch and floods my yard every time it rains; my children play in this yard).

(b) **Response:** The Cabinet is aware of the situation detailed in this comment. The Cabinet has made a number of inspections in response, and is addressing the matter accordingly. Issues relating to dust, vectors (flies, rodents, etc.), hours of operation, and stress are outside the scope of this regulation. Permanent litter storage is required if manure is stored at the CAFO operation. Otherwise, any stockpiling of manure is to be done in accordance with the Agriculture Water Quality Plan, including the use of temporary covers such as tarps. Any potential violation in existing regulations should be reported to the regional field office and handled as a complaint.

(27) Subject: Threat to Public Health and the Environment

(a) **Comment:** Corrine Whitehead, Coalition for Health Concern

Permits must not be issued to corporations who have caused critical damage to the human population and the environment in North Carolina and other states.

(b) **Response:** The Cabinet has the authority to take performance history is taken into account pursuant to KRS 224-100(19)(a).

(28) Subject: Need for Permit

(a) **Comment:** Ronnie Bloecher, Poultry Farmer

Why have a permit for something that is already regulated? Is the permit going to help a farmer comply with a regulation or is it just going to create paperwork and drive up the cost of doing business?

(b) **Response:** The federal Clean Water Act requires a permit for operations defined as CAFOs.

(29) Subject: Need for Permit

(a) **Comment:** Kimberly Boswell, Poultry Farmer, Nurse
Jim Duff
Greg Hefton, Poultry Farmer
William Douglas Lewis, Sr., Poultry Farmer
Ira Linville, Kentucky Department of Agriculture
Bill Payne, KY Milk Producers Association

Why should we need a permit when we are already being conscientious? This is a burdensome requirement in an already busy business. Current KPDES and KNDOP permitting programs supported by the Agriculture Water Quality Act can address all the concerns without a new general permit.

(b) **Response:** EPA has put forth a unified national strategy with which the agency is attempting to comply. The issuance of these general permits is a requirement of the KPDES regulations to which you cite, and to which the Agriculture Water Quality Act has acknowledged.

(30) Subject: Cost of Permit

(a) **Comment:** Dennis Liptrap, IPKY

What is the cost associated with an individual KPDES permit?

(b) **Response:** \$1200 for a five-year permit plus the cost of any monitoring and analysis.

(31) **Subject: Cost of Permit**

(a) **Comment:** Dennis Liptrap, IPKY

In the event of a discharge, the producer is responsible for collecting and obtaining analyses at 3 sites with 10 analyses per site. What is the estimated cost for these analyses and where are the approved laboratories for conducting the tests?

(b) **Response:** A lab does not have to be approved. Testing methods must, however, be in accordance with 40 CFR Part 136. A cost estimate for the analysis required by the permit in the event of a discharge at a single outfall is \$150 to \$200.

(32) **Subject: Cost of Permit**

(a) **Comment:** Ronnie Bloecher, Poultry Farmer
Meldrum Harvey, Retired Physician, Farmer
Jerry Lock
Ira Linville, Kentucky Department for Agriculture
Wesley Slaton, Farmer

\$1200.00 is excessive for the cost of a permit and burdensome on those wishing to expand or start facilities. What is the purpose of the fee?

(b) **Response:** The permit fees for individual KPDES permits are required by statute, KRS 224.70-120. Kentucky's permit fees have not been revised since 1990, and are generally well below that of surrounding states. All permit fee dollars are sent to the "General Fund" for overall state government programs. It should be noted that general KPDES permits do not have a permit fee associated with them at present. The amount of permit fee dollars generated from the issuance of these permits is significantly less than that required to effectively implement the program.

(33) **Subject: Cost of Permit**

(a) **Comment:** Glenda Preston, Farmer

Who is going to pay for all the soil and water analyses?

(b) **Response:** The permit holder is responsible for the cost of analysis.

(34) **Subject: Effects of Permitting**

(a) **Comment:** Nancy Bulter, Poultry Producer

Permit requirements will inhibit the growth and expansion of my small farm. If I were to sell my operation, the value of my farm would be less if the proposed buyer could not expand.

(b) **Response:** While it is true an expanded operation may have to apply for a KPDES permit, the KPDES permits do not prohibit expansion.

(35) Subject: Effects of Permitting

(a) **Comment:** Ira Linville, Kentucky Department of Agriculture

Poultry, swine, dairy, beef pre-conditioning feed lots, livestock sales facilities, stockyards will all be affected by the permitting process. Time delays to process construction and general permits will be additional burdens to those wishing to expand or start new facilities.

(b) **Response:** Construction permits are already required for any liquid manure handling system. The proposed general permits do not affect or change that requirement. Time delays for the issuance of general permits are minimal provided a complete application has been submitted.

(36) Subject: Agriculture Water Quality Plan

(a) **Comment:** Tom Fitzgerald, Kentucky Resources Council

The development or upgrading of a comprehensive nutrient management plan (CNMP) needs to be one of the first things that is considered for those that do have the Agriculture Water Quality Plans in place. The CNMP should be required to be submitted to the Cabinet for review in order assure compliance with the KPDES program, DAQ requirements, and solid waste permit-by-rule requirement that beneficial use of waste nutrients not result in a nuisance. CNMP requirements should be outlined in detail and, once approved, incorporated as enforceable requirements of permits. The CNMP should require: a general prohibition against creation of a nuisance or water pollution; analysis of the suitability of the land for land application, including evaluation of soil and subsoil permeabilities; potentiometric mapping and identification of aquifers; evaluation of vulnerability of groundwater resources; soil slope, erodability, land use of proposed disposal site and surrounding land uses, existence of water withdrawals downstream of proposed site; loading and cycling of nitrogen and phosphorus; limitations on application of manure or disposal of wastewaters based on soil, slope and composition of wastes; prohibition of spreading or spray irrigation near areas of influence of sinkholes, wetlands, groundwater recharge areas, in proximity to surface waters, water wells, canals; buffer strips by all intermittent and perennial streams; complete chemical characterization of proposed wastes and wastewaters; copies of all necessary recorded manure easement agreements; a manure disposal plan with daily and annual limits of animal waste that will be land-applied and the number of acres that have been designated to receive this waste, and shall also indicate how all other wastes generated by the facility will be managed to prevent pollution and avoid creation of nuisances; hourly application rates should be controlled and must uniformly be less than soil infiltration rates, to prevent contaminated runoff; crop yield goals and plant uptake of nutrients must be matched; limits on application for nitrogen and phosphorus, and for prevention of accumulations of toxic concentrations of metals; appropriate limits, compliance with which must be documented by periodic soil tests, on individual and lifetime applications of manures, sludges and wastewaters for all potential

pollutants of concern from an environmental or public health standpoint, including metals, copper, zinc, nitrates, phosphorus, antibiotics, and enteric pathogens, roundworms, viruses and other biological contaminants of concern; evaluation should also consider the partitioning of the nutrients, identifying the fraction that will leach, volatilize, denitrify, or be taken up by the plants; management of manure, wastes and wastewaters must address the months when land application is inappropriate.

(b) **Response:** The Cabinet agrees with this comment. The agency anticipates significant delays in producers being able to locate and retain qualified assistance in the preparation of the CNMPs. Therefore, while requiring the basic Agricultural BMP plan right away (to provide a continuing level of protection), a delayed requirement (to October 2001) for the CNMPs was considered necessary. See also response to comment #52.

(37) Subject: Agriculture Water Quality Plan

(a) **Comment:** Loraine Buckingham, Farmer, Nurse
Nancy Bulter, Poultry Producer
Lloyd R. Cress, Attorney, Cagle's-Keystone Foods

Give us permits we can live with and funds to help us implement them. Work with the Kentucky poultry industry in developing a meaningful and reasonable environmental regulatory program to be implemented through site-specific agriculture water quality plans.

(b) **Response:** The Kentucky poultry industry has had a role in the development of meaningful regulations and agriculture water quality plans. Cost share programs are available through conservation districts. See also response to comment #39

(38) Subject: Agriculture Water Quality Plan

(a) **Comment:** Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Mark Reding, Kentucky Pork Producers

The permits should specify that the Agriculture Water Quality Authority shall include the requirements of the CNMP in the state Ag Water Quality Plan and that a producer's completion of one plan will be recognized as completion of either plan.

(b) **Response:** The agency has modified the draft permit to make this requirement for a Comprehensive Nutrient Management Plan (CNMP) more clear and efficient. The permit requires that a CNMP be developed and implemented by October 2001. The CNMP is to include the best management practices set out in the Agriculture Water Quality Plan (AWQ Plan). The permit holder can either develop two separate documents (an AWQ Plan and a CNMP) or combine them into one document for implementation and submittal purposes. The Cabinet agrees that one comprehensive plan is a more efficient method for producers to implement and will accept an AWQ Plan that incorporates the components and requirements of the CNMP specified in the permit. The permit has been modified to account for this. It should be noted, however, that the CNMP, including the best management practices from the AWQ Plan, is subject to the enforcement procedures applicable to the NPDES program. In addition, the CNMP (whether developed separately or together with the AWQ Plan) must be prepared and implemented by October, 2001. The complete document must be submitted to the Cabinet by October 2001 where it will become a part of the

public record. In the interim, the permittee must adhere to other conditions of the permit as specified (including, but not limited to, setbacks, monitoring, best management practices, and nutrient management).

(39) Subject: Agriculture Water Quality Authority

- (a) **Comment:** Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Terry Rhodes, President, Kentucky Corn Growers Association

We strongly object to the Cabinet's establishing siting criteria and setbacks without formally requesting input from the expertise and the experience of the Agriculture Water Quality Authority. Deciding where farming operations can build or expand facilities and apply manure without input from the agriculture community could force livestock and poultry farmers out of business. The Cabinet *has* incorporated nearly all of the Authority's setbacks for poultry in the proposed regulations.

- (b) **Response:** The Cabinet has sought the input of the Agriculture Water Quality Authority, commodity groups, extension, farmers, and numerous other individuals throughout the course of this process of addressing animal feeding operations. The setbacks adopted in 401 KAR 5:072 reflect the information gathered by the agency to date.

(40) Subject: Agriculture Water Quality Plan

- (a) **Comment:** Richard Mattingly, Farmer

Water quality plan requirements are already in place and required by lending institutions. If I were unable to comply with approved waste utilization within my own farm, I would have to get my neighbors to become a part of the plan or I would not be allowed to expand my operation, so why is there a need for public hearings for permits for CAFO if the NRCS is already controlling expansion?

- (b) **Response:** NRCS is a voluntary technical assistance program and not a regulating authority. General permit issuance will not require a separate public hearing, whereas individual permit issuance may. The procedures for public notice are required in both federal and state regulations for the KPDES program.

(41) Subject: Agriculture Water Quality Authority

- (a) **Comment:** Elwood T. Butrum, Poultry Farmer
Jim Duff
Ira Linville, Kentucky Department of Agriculture
Billy Ray Smith, Kentucky Department of Agriculture
John and Rickie Shocklee, Farmers

The current KPDES and KNDOP permitting programs are supported by the Ag Water Quality Act. If properly implemented, those can address all the concerns without a new general permit or even individual permits in some cases. The Agriculture Water Quality Authority Technical Committee should be the resource recommending siting criteria to the Cabinet.

(b) **Response:** The Agriculture Water Quality Authority has been involved in the development of siting criteria. The issuance of these general permits is a requirement of the KPDES regulations to which you cite, which the Agriculture Water Quality Authority has acknowledged.

(42) Subject: Best Management Practices

(a) **Comment:** Loraine Buckingham, Poultry Grower

Non-process wastewater is described as runoff from land application and should not even be part of effluent limitations, but are part of BMPs. BMPs should be the only issue we have to deal with.

(b) **Response:** For clarification, the term non-process wastewater has been removed from the permits. The permits do not allow the discharge of contaminated runoff from land application areas. BMPs are required as a condition of the permit.

(43) Subject: Best Management Practices

(a) **Comment:** Loraine Buckingham, Poultry Grower

How can you monitor land applied litter daily when it is done semi-annually?

(b) **Response:** The requirement is intended to document the amount of litter that is land applied on days that litter is land applied, and to document those days when no litter is applied. The CNMP would need to address the nutrient management of each operation.

(44) Subject: Best Management Practices

(a) **Comment:** Loraine Buckingham, Poultry Grower

Lagoon freeboard cannot be measured for poultry operations since poultry operations have no lagoons. Remaining capacity in litter storage structures has no bearing on water quality.

(b) **Response:** Part III-C has been changed to say, “percentage of remaining animal waste storage capacity.”

(45) Subject: Best Management Practices

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Change “lagoon freeboard” to “lagoon or liquid storage” freeboard.

(b) **Response:** Part III-C has been changed to say, “percentage of remaining animal waste storage capacity.”

(46) Subject: Best Management Practices

(a) **Comment:** Loraine Buckingham, Poultry Grower

Since it doesn't rain daily, let's amend the frequency of monitoring precipitation to "as occurs".

(b) **Response:** The requirement is intended to document the amount of rainfall received, as well as when no rainfall occurs. See also response to comment #43.

(47) Subject: Best Management Practices

(a) **Comment:** Dennis Liptrap, IPKY
Richard Mattingly, Farmer
Mark Reding, Kentucky Pork Producers Association

Record keeping of daily events such as precipitation are an excessive burden on operators of small CAFOs. Weather stations already record this information.

(b) **Response:** Local weather may differ greatly from that monitored by weather stations. Rainfall can by its nature be very sporadic, thus the need for specific site evaluation. The Cabinet disagrees that such a requirement is overly burdensome.

(48) Subject: Best Management Practices

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Waste applications should be recorded as they occur, normally one to four times per year.

(b) **Response:** The Cabinet agrees that waste applications should be recorded when they occur. In order to do this, a daily evaluation must be made. This also provides a record of when no application is made. See also response to comment #43.

(49) Subject: Best Management Practices

(a) **Comment:** Dennis Liptrap, IPKY
Richard Mattingly, Farmer

Annual monitoring of changes in soil phosphorus will become a part of the nutrient management plan. Annual analysis of litter and soil is the only economical and reasonable way to maximize this resource. Why is it necessary to legally require this?

(b) **Response:** Soil analysis is necessary to prevent the application of nutrients at rates that will exceed the capacity of the soil and crops to assimilate them. The permits must require it to ensure that this is being done. The proper application of nutrients is a vital component of protecting water quality in this permit.

(50) Subject: Best Management Practices

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Soil nitrogen content cannot be reliably measured. This requirement should be deleted.

(b) **Response:** The Cabinet concurs with the comment and has deleted this requirement from the draft permits. The permit holder is responsible to ensure that amounts of nitrogen land applied meet environmental standards, including those required by the CNMP.

(51) Subject: Best Management Practices

(a) **Comment:** Hank Graddy, Attorney, Sierra Club

The Fact Sheet cites to 401 KAR 5:065, Section 2(10) which provides the Cabinet with authority to include BMPs in a KPDES permit when needed or feasible. The general permit fails to include BMPs as needed in spite of this authority to do so.

(b) **Response:** The permit requires development of a BMP Plan which is in accordance with all applicable portions of the Agriculture Water Quality Plan for livestock. The BMP Plan must also include a CNMP. See also response to comment #38.

(52) Subject: Best Management Practices

(a) **Comment:** Hank Graddy, Attorney, Sierra Club

Why wait till January, 2003 for CNMPs? Language in the general permit lacks specific environmental protection requirements including the requirement that nutrients, both nitrogen and phosphorous, cannot be applied above crop need. Other areas of concern are that all CAFOs have enough land owned or under contract to handle the waste/litter that will be land applied, and the requirement that records be kept of all litter that is transferred offsite. Also clarify the right of public access.

(b) **Response:** See response to comment #38.

(53) Subject: Violations and Corrective Action

(a) **Comment:** Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Neither the emergency regulation nor the draft permits describe a process for notice of violation, fine schedules, or corrective action. We suggest corrective action provisions similar to those in the Agriculture Water Quality Act be included in the regulation.

(b) **Response:** The Cabinet's administrative regulations regarding the federal Clean Water Act do not generally set out these requirements. Processes for citing violations and setting civil penalties are found in KRS Chapter 224.

(54) Subject: Public Availability of Data

(a) **Comment:** Ray Barry, President, Kentucky Conservation Committee
Susan Crosswait
Pennie A. DuBarry
Aloma Dew, Sierra Club

All test results from groundwater, surface water, and soil should be submitted to the state and available for the public to review.

(b) **Response:** Any information submitted is available for public view through an open records request. Data collected by the permit holder must be made available to representatives of the Division upon request.

(55) Subject: Individual v. General Permits

(a) **Comment:** Ray Barry, President, Kentucky Conservation Committee
Susan Crosswait
Aloma Dew, Sierra Club
Pennie A. DuBarry
Kathy Lyons
Chetan Talwalker, Democracy Resource Center
Liz Natter, Director, Democracy Resource Center
Heather Roe Mahoney, Democracy Resource Center
Joe Nepi, Doe Valley
Sue Whayne
Karol Welch, Magistrate, Madisonville
Ann Wilkerson, Kentuckians for the Commonwealth
Aloma Dew, Sierra Club
Hank Graddy, Sierra Club

Permits should be issued on an individual basis. Individual permits allow neighbors the opportunity to make known the site specific conditions and requirements to protect local water sources, springs, streams, sink holes, air and neighbors. The local citizens are often aware of sensitive environmental features, wells, dwellings, etc. when the Cabinet and even the CAFO operator are not. Individual permits also make the operator more aware of his neighbors and their needs. Individual permits and public hearings should be required for all CAFOs. People have the right to advance knowledge that a facility is to be built next door.

(b) **Response:** See response to comment #16.

(56) Subject: Individual v. General Permits

(a) **Comment:** Hank Graddy, Sierra Club

Effective January 1, 2000, all existing CAFOs are required to comply with general permit requirements unless they were designated to require an individual permit and all new CAFOs and all existing CAFOs that were significantly expanded were required to get an individual NPDES permit under the unified national strategy. The general permit is not available to poultry CAFOs with existing individual permits. The Sierra Club believes there are no such facilities so this is not a meaningful limit. The Sierra Club strongly supports the fact that the general permit is not available for CAFOs with over 150,000 birds.

(b) **Response:** See response to comment #16. The Cabinet considered requiring individual permits for all new and/or expanding CAFOs and general permits for all existing operations, but has chosen not to do so in its final determination.

(57) Subject: Individual v. General Permits

(a) **Comment:** Nancy Butler, Poultry Producer

I am bordered on three sides by large farmers. Do you really think that these operations are going to sit down with me and give me the thumbs up on a permit? Do I get to voice my concerns on their farming practices?

(b) **Response:** See response to comment #16. Any environmental complaints or concerns regarding an operation can be directed toward the agency's complaint coordinator or the local field office.

(58) Subject: Individual v. General Permits

(a) **Comment:** Rebeckah Freeman, Kentucky Farm Bureau
Dennis Liptrap, IPKY
Alan Lutz, Farmer
Bill Payne, KY Milk Producers Association

Individual permits for 1,500 animal units is arbitrary and unjustified. Due to their expense and public scrutiny, the need for an individual permit should only be triggered by environmental sensitivity or a history of water quality violations or mismanagement at the facility. How was this threshold determined?

(b) **Response:** See response to comment #16. The threshold was a decision made by the Cabinet.

(59) Subject: General Permits

(a) **Comment:** Tom Fitzgerald, Kentucky Resources Council, Inc.

The proposed general KPDES permit lacks public notification of the proposed CAFO, depriving neighbors of the opportunity to present information and increasing local opposition and discomfort concerning such operations.

(b) **Response:** See response to comment #16 & 56.

(60) Subject: Notice of Intent

(a) **Comment:** Hank Graddy, Attorney, Sierra Club

As required in the Unified Strategy and Guidance, the Cabinet should: make clear that the public have access to all NOIs; specify a waiting period sufficient for NOI review before coverage under the general permit becomes effective; and require all existing CAFOs to submit an NOI by a date certain. All existing CAFOs in Kentucky should be required to give notice of intent not later than 30 days after the close of the public hearings on these general permits.

(b) **Response:** The public has access to NOIs through a freedom of information request. The Cabinet has not established any specific dates for submission or for the processing of NOIs.

(61) Subject: Proposed Operational Requirements and Limitations

(a) **Comment:** Hank Graddy, Attorney, Sierra Club

The permit should set limits for what may be present in the discharge of process wastewater overflows and non-process wastewater. The requirement that non-process wastewater shall not cause or contribute to a water quality violation is not what is required under the CWA for point sources. The permit should retain the appropriate narrative requirements but also include permit limits based on water quality standards and best professional judgement.

(b) **Response:** For clarification, the term non-process wastewater has been removed from the draft permits. The permits now require that there be no discharge of process wastewater from the facility, including from land application areas. Process wastewater is defined in 40 CFR Part 412.11.

(62) Subject: Proposed Operational Requirements and Limitations

(a) **Comment:** Hank Graddy, Attorney, Sierra Club

On page 4, the Sierra Club believes the Cabinet continues to fail to implement the CWA antidegradation requirement according to law.

(b) **Response:** The Cabinet has satisfied the conditions of the CWA antidegradation requirement, pursuant to 401 KAR 5:029, Section 2(1) and (3).

(63) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Loraine Buckingham, Poultry Grower

There is no process wastewater generated within the confines of a poultry operation. There are no lagoons, equalization basins, or holding ponds that are subject to overflows during any catastrophic event. There is no flow and therefore it can not be measured. Dry matter contains no total suspended solids, therefore there is nothing to monitor. BOD is not practical for solid waste. In addition, TSS and BOD require a grab sample. A composite sample is a series of grab samples taken at regular intervals directly proportionate to the flow from the facility over a 24-hour period. There are no flows, so how would you propose to approach that requirement?

(b) **Response:** See also response to comments #42 & 44. In addition, the term process wastewater is a term used and required by federal and state regulations. In this context, it would include water coming into contact with waste material, such as storm water runoff from litter storage. Further, all discharge monitoring requirements of the permits are only valid when a rainfall of at least a 25-year, 24-hour magnitude causes a liquid overflow of wastewater to occur from any type of waste storage structure. In the absence of such a discharge, no monitoring is required. Finally, only grab samples are specified in the permit as opposed to composite samples.

(64) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

The requirement for no discharge of process wastewater is appropriate for animal production facilities as they are designed to operate normally in that manner. It is illogical and contradictory to issue a KPDES permit with all its inherent discharge monitoring and reporting requirements when no discharge is actually being permitted.

(b) **Response:** The requirement for a CAFO to obtain a KPDES permit is pursuant to the CWA and consistent with federal and state regulations. These same regulations require that no discharge of process wastewater occur at a CAFO except for rainfall events greater than a 25-year, 24-hour magnitude. The monitoring requirements are established for only this event. Any other discharge is expressly prohibited and would be a violation of the permit requirements.

(65) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

On page I-1, line 3, the phrase “permittee is authorized to operate a (swine, poultry, beef, or dairy) facility...” should be changed to reflect that the permit is issued only for operation of a wastewater management system that is associated with the animal facility. There is no authority for a KPDES permit to authorize, prohibit, or regulate housing, feeding, or other care and management that is part of an animal production facility. The permit should address only the wastewater produced.

(b) **Response:** The KPDES permit as issued specifies requirements for waste handling and siting criteria, among other aspects. These requirements have been changed from the draft in order to clarify this.

(66) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Overflows that might occur would be discrete events of short duration. Each overflow should be reported as an estimate of either flow and duration or total quantity and duration. Little or no useful information will be gained from analyses of a single grab sample, and monthly averages are irrelevant to discrete events. Except as noted above, delete the sampling and reporting requirements from the permits. The permit provides other requirements for monitoring the liquid level and nutrient content of manure storages, and those requirements which will provide as much or more useful information about an overflow than a grab sample.

(b) **Response:** In accordance with the comment the final permits require that an estimate of total quantity (flow) be made and reported in the event of a discharge. The permits do not specify monthly average or daily maximum in the reporting. Monitoring of a discharge is the best way to determine what is actually being discharged, and is consistent with the CAFO unified strategy recommendations.

(67) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Dennis Liptrap, IPKY

How much rain constitutes a 25-year, 24-hour rainfall event? Where is data available to calculate such an event on a local basis? What are producers supposed to do with wastewater when they receive 10” of rain on Tuesday and another 10” on Thursday?

(b) **Response:** Local conservation districts, NRCS and extension agents have rainfall data available that corresponds to a 25-year, 24-hour rainfall event. A 10 inch rain would classify as a 25-year, 24-hour rain event and an overflow of process wastewater would be allowed in each case. These discharges would then need to be sampled according to the permit requirements.

(68) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Loraine Buckingham, Poultry Grower

Temperature measurements would be required. Temperature of what?

(b) **Response:** The temperature of any process wastewater discharge is required to be measured. Process wastewater includes any process generated wastewater and any precipitation which comes into contact with manure or litter, bedding, or any other material or product used in or resulting from the production of animals or products thereof.

(69) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Loraine Buckingham, Poultry Grower

The set permit parameters are not the same for any two facilities. The parameters are formulated based on the mass balance of the receiving stream. Where is the receiving stream in the case of a poultry operation?

(b) **Response:** The receiving stream would be the nearest water of the Commonwealth which receives a process wastewater discharge in the event that a 25-year, 24-hour rainfall causes an overflow. No specific limits have been established in the permit as would normally be the case when performing a wasteload allocation which take into account mass balance aspects.

(70) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Aloma Dew, Sierra Club

The Cabinet has the authority to set effluent limitations but has not done so. Effluent limitations should be set in the permits.

(b) **Response:** The permit requires no discharge of process wastewater. No effluent limitations are deemed necessary as a result of this permit requirement.

(71) Subject: Effluent Limitations and Monitoring Requirements

(a) **Comment:** Aloma Dew, Sierra Club

Non-process wastewater is a major problem as it flows through neighbor's properties, in some cases under buildings, through yards and over well heads, and across a spring opening which is a water source. Do these neighbors deserve clean water and protection from manure runoff? Please add limits on non-process wastewater

(b) **Response:** For clarification, the term non-process wastewater has been removed from the draft permits. The agency concurs that water must be protected. The no discharge requirements of the permits are designed to protect for that very thing. The permits also require procedures to be implemented which will further protect the surrounding areas from runoff such as the establishment of buffer zones, compliance with setback features and the use of waste management plans. See also response to comment #61.

(72) Subject: Standard Conditions for KPDES Permits

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Reference to KRS 224.99-010(1)(4) exposes the KPDES permit holder to a potential fine of \$25,000 per day for violations of any permit condition. This is an extraordinary financial risk for facilities generating an annual income of less than \$30,000 per year. The Cabinet should make alternate provisions that are more consistent with the financial reality of regulated facilities. Incorporate provisions of the Agriculture Water Quality Act into the procedures for addressing noncompliance.

(b) **Response:** The permits do not set fine schedules, rather they are specifically set in KRS Chapter 224. Enforcement of the KPDES permit will occur in accordance with applicable KPDES regulations.

(73) Subject: Standard Conditions for KPDES Permits

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

401 KAR 5:065 provides for unrestricted access and entry to facilities. Add language to the permit requiring compliance with all biosecurity procedures when entering the permittee's facility.

(b) **Response:** Since particular biosecurity issues vary by facility and animal type this isn't an issue which the general permit should address. Agency representatives will follow appropriate procedures should access to the facility become necessary.

(74) Subject: Standard Conditions for KPDES Permits

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

On page II-1, A, delete the third paragraph. The sensitivity of analytical methods is irrelevant since no parameter limitations are established in the permit.

(b) **Response:** The Cabinet has removed the paragraph from the draft permits. The agency would note that monitoring must adhere to the methods described in 40 CFR Part 136.

(75) Subject: Siting Criteria

(a) **Comment:** Glenda Preston, Poultry Farmer
Phillip Smith
Richard Mattingly
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Carla J. Creasey, Poultry Farmer

John and Rickie Shocklee, Farmers
Charles Shocklee, Farmer
Raymond Highball, Lender
Chris Rodgers, Citizens Bank of Hickman, Kentucky
Alfred O'Reilly, Poultry Farmer

Because of setback requirements a majority of Kentucky's existing CAFOs can not expand their operations and most poultry producers will be unable to build permanent litter storage. The regulations will not allow some farmers to build chicken barns and will leave them to pay for land out of pocket.

(b) **Response:** Existing operations can expand provided they comply with respective permitting requirements and siting criteria, including setbacks. For existing poultry operations, it was never the intention of the Cabinet to prohibit permanent litter storage structures from being built where those operations are currently sited closer than the proposed regulations would otherwise allow. The regulation was clarified to make this distinction more clear.

(76) **Subject: Siting Criteria**

(a) **Comment:** Dudley Cooper, Ohio County Judge Executive

Let farm families have the option to build poultry houses with a reasonable setback of 500 feet.

(b) **Response:** Agriculture Water Quality Plan BMP #17 (Poultry Facility Siting) requires a setback of 1500 feet for schools, churches and adjacent cemeteries, incorporated city limits and public parks. In addition, BMP #17 establishes setbacks from dwellings other than growers, or not associated with the operation at 500 feet, except at tunnel ventilation fan outlets, which are to be 750 feet. The Cabinet regulation does not distinguish between dwellings and other structures or areas where the public may be. Since dwellings are occupied as often, if not more than these other features, an equal level of protection is deemed necessary.

(77) **Subject: Siting Criteria**

(a) **Comment:** Todd Wright, Complex Environmental Manager, Tyson Foods
Danny Payne
Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of
Agriculture

What is the justification for the setback distances? Some of the setbacks are too extreme. After four years, only a handful of citations have been issued statewide and there is virtually no history of violations of the environmental performance standards. The setbacks appear to be arbitrary and do not consider the BMPs that now exist or may be developed. Setbacks are excessive for some parameters. The Agriculture Water Quality Authority Technical Committee should be the resource recommending siting criteria to the Cabinet.

(b) **Response:** The proposed setbacks are the result of an evolving process that the Cabinet has undergone since early 1997. They represent the Cabinet's Best Professional Judgement of what is needed to protect air and water quality at this time. The poultry setbacks, for example, are based substantially on

BMP #17 from the Agriculture Water Quality Plan. One notable exception is dwellings (see response to comment #76 above). Any future BMPs developed by the Authority will be evaluated at that time.

With respect to the lack of citations issued by the Cabinet statewide on setbacks, that would be expected. During the period in which the swine feeding regulation (401 KAR 5:009) was in effect, no operation was ever permitted under that program. As a result, no setback violations occurred under that program. The current regulation (401 KAR 5:072), went into effect in its emergency version on February 14, 2000, and is still in the process of being implemented. It should be noted however, that the Cabinet has identified numerous instances in the past where animal feeding operations were violating permit requirements or other state regulations.

(78) Subject: Siting Criteria

- (a) **Comment:** Kimberly Boswell, Poultry Farmer, Nurse
James Duff, Poultry Farmer
Danny Payne
Mike Brawner, Farmer

Protect us from city dwellers moving and building within fifteen hundred feet of our farms. Declare agriculture empowerment zones in each county and do not allow people to move in any closer than 1,500 feet to these zones.

(b) **Response:** The Cabinet recognizes the concern that farmers have with more individuals moving to rural settings as it relates to complaints about farming activities. In that regard, the Cabinet has recognized existing operations in the course of developing the regulation. Existing structures and activities are unaffected by the moving in of new neighbors, with some exceptions. Those include land application setbacks as currently established by BMP #17 for poultry operations. The Cabinet does not, however, propose to establish agriculture empowerment zones in each county since that action exceeds our statutory authority.

(79) Subject: Siting Criteria

- (a) **Comment:** Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

A facility would need to be in the center of a six-tenths mile diameter circle to meet those requirements. This constitutes land use zoning, with or without local ordinances.

(b) **Response:** The diameter would be accurate (approximately 0.6 mile) if one assumes that adjacent dwellings surround a given farm on all sides, and that all dwellings are located precisely on the property line. If those assumptions were the situation, then in order to meet a dwelling setback of 1500 feet, a farm would need to be approximately 162 acres in size if in the shape of a circle, or approximately 206 acres if in the shape of a square. On the other hand, if neighboring dwellings are not located directly on the property line as would be expected, then substantially less acreage could potentially be suitable. As a note, the average farm size in Kentucky as per statistics made available by the Kentucky Agricultural Statistics Service is 149 acres (91,000 farms). This would suggest that numerous farms in Kentucky could be suitable for a CAFO operation under the proposed regulations.

In addition to the above, another factor to consider when evaluating environmental concerns as it relates to farm size is the ability to utilize the manure produced. For a poultry CAFO for example, with 100,000 broilers, some 600 tons/year of litter would be generated. A farm of 162 or 206 acres, as mentioned previously, would likely not be able sufficient to utilize this volume of annual litter generation as a fertilizer due to both agronomic and environmental concerns. In these instances, litter would need to be sent off-site in order to handle properly, which is a common practice in Kentucky with existing large poultry producers. While this regulation only addresses CAFOs, these off-site locations also have similar environmental concerns as the CAFOs that produce the manure. This is noted to simply illustrate some of the environmental challenges in dealing with large animal feeding operations.

Farm size was addressed in BMP # 17 of the Agriculture Water Quality Plan, for instance, which requires that a minimum of 15 acres be present for 1 or 2 poultry houses, with an additional 5 acres for each additional house. This would indicate that 25 acres is suitable for a 4 house poultry operation confining approximately 100,000 broilers, with the poultry houses themselves comprising 2 to 5 acres of the operation. However, the Cabinet has concerns as to whether this amount of acreage is sufficient to address environmental concerns relating to a CAFO. These concerns are further compounded when multiple operations of similar size are located in the same general area.

With these, and other considerations taken into account, the Cabinet used all available resources to determine what setback distances would be reasonable to protect air and water quality. This is not a zoning measure.

(80) **Subject: Siting Criteria**

- (a) **Comment:** Jerry Hobgood, Mayor, Sebree, Kentucky
Terry Rhodes, President, Kentucky Corn Growers Association

A setback of 1,500 feet eliminates basically all farms in Webster County. Small tobacco farm owners cannot use chicken litter as a substitute fertilizer to reduce cost of operation. Setbacks from roads for injection and broadcast or other land application methods of livestock manure will virtually eliminate corn producers from utilizing livestock manure as a nutrient source. A producer would have to come back and apply chemical fertilizer around the roads. The regulations as proposed encourage the over application of manure on fields that are not visible to the public.

- (b) **Response:** A frequent misinterpretation of the regulations that has been made relates to how the use of manure would be affected. This permit and the associated regulations would only address manure as it is applied on a farm, if that farm is defined as a CAFO. For example, an individual who purchases or uses manure from a CAFO operation, but is not a CAFO itself, would not be subject to the regulation. That operation, provided it is greater than 10 acres in size, would need to adhere to the Agriculture Water Quality Plan BMPs. Only operations that are defined as a CAFO, are subject to the regulation.

In Kentucky, the Cabinet has estimated that some 250 operations currently exist which may qualify as a CAFO. In that respect, small tobacco farmers that are not defined as a CAFO, would not be prohibited from using manure as a substitute for commercial fertilizer except where the Agriculture Water Quality Plan BMPs or other regulations otherwise prohibit.

Further, virtually every producer, commodity group, or organization representing a farm interest who made comment at the public hearings indicated that they had either already filed their Agriculture Water Quality Plan, or were implementing it currently. The land application setbacks for poultry CAFOs, for example, were derived in large part from the Agriculture Water Quality Plan BMP #17, for which virtually all poultry producers expressed support.

(81) Subject: Siting Criteria

- (a) **Comment:** Bill Payne, Dairy Producer, Kentucky Milk Producer's Association
Terry Rhodes, President, Kentucky Corn Growers Association
John Donaldson

Very few sites will conform when siting a new barn or operation. The land application area setbacks that pertain to property lines, roadways, and dwellings have no bearing on water quality. Setbacks have nothing to do with water quality except for blue line streams, wells, sink holes, and topography. Due to manure application setbacks farmers can not keep applications as thin as they ought to.

- (b) **Response:** It was not the intent of the regulation to ensure that all farms have the potential for becoming a CAFO. Rather, it was the intent of the regulation to protect air and water quality. Not every farm is suitable to confine the number of animals that would constitute a CAFO. Many of the problems that Kentucky has, and the Cabinet has identified thus far with large animal feeding operations, are directly related to a lack of acreage at that operation. Whether the issue is water quality, odor, or inability to handle the manure being produced at that site, sufficient acreage is often a vital component. Setbacks are one means of addressing that issue. See also response to comment # 79.

With respect to property lines, the regulation does not address property lines. The Agriculture Water Quality Plan does however establish setbacks for property lines. Dwellings are listed in the regulation with regard to setbacks in order to address odor. The Agriculture Water Quality Plan similarly addresses dwellings, churches, etc. Primary and secondary roads are listed in the regulation to address odor as well.

On the matter of manure application, the CNMP will determine the manner in which nutrients (manure) can be applied.

(82) Subject: Siting Criteria

- (a) **Comment:** Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club
Aloma Dew, Sierra Club

Poultry setbacks are less than that of swine, beef, or dairy. There are no property line setbacks for poultry. A setback requirement to property lines is required, of at least 750 feet. Setbacks also need to be required for land application of manure. What is the rationale?

- (b) **Response:** As previously discussed, the poultry setbacks were primarily based on the Agriculture Water Quality Plan BMP #17. Similar setback BMPs for swine, beef, or dairy did not exist. In addition, the dry nature of poultry litter (provided it is kept dry) lends itself to less odor than does wet manure, which is typically the case with swine, dairy and some beef operations.

The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to protect of air and water quality. Setbacks are proposed for land application of manure at a CAFO.

(83) Subject: Siting Criteria

(a) **Comment:** Hank Graddy, Attorney, Cumberland Chapter of the Sierra Club

Setbacks must get larger as the facility gets larger.

(b) **Response:** Larger facilities, greater than 1500 animal units, would need an individual permit. The regulations, however, do not specify differing setbacks for larger operations.

(84) Subject: Siting Criteria

(a) **Comment:** Mark Redding, President, Kentucky Pork Producers Association
Dennis Liptrap, IPKY, Inc.

Why has the NREPC used some facility siting and manure application setback distances for poultry that are different from those for swine, beef, or dairy?

(b) **Response:** See response to comment # 82.

(85) Subject: Siting Criteria

(a) **Comment:** Joe Nepi, Chairman, Doe Valley Environmental Resource Committee

How was siting criteria established? What criteria or analysis was used to determine appropriate setbacks?

(b) **Response:** See responses to comments #39, #77, and #82. In addition, the Cabinet used various air dispersion models, risk information, and other research tools to evaluate the potential odor, air toxics, pathogen, and airborne health impacts from these operations. The setbacks represent the result of that research.

(86) Subject: Siting Criteria

(a) **Comment:** Joe Nepi, Chairman, Doe Valley Environmental Resource Committee

Clarify Section 3(2)(c). Are you restricting the placement of a structure in a sinkhole?

(b) **Response:** Both the regulation and the permits do prohibit the placement of a livestock barn, poultry house, or lagoon in a sinkhole.

(87) Subject: Siting Criteria

(a) **Comment:** Charles Miller, Farmer

The setbacks are designed primarily to protect the environment. Have the effects of setbacks on people who live in the area been considered?

(b) **Response:** Yes, the setbacks have taken into consideration potential effects on people. See response to comment # 85.

(88) Subject: Siting Criteria

(a) **Comment:** Dennis Liptrap, IPKY, Inc.

What is the justification for wide application setbacks to public roads in the absence of other setbacks? Setbacks mandated by regulation should be considered “government taking” of land and farmers should be compensated for application setbacks along roads and those setbacks that exceed NRCS guidelines for buffer zones next to streams. Please justify the setbacks to public water intakes of 5 miles and 1 mile. How many livestock producers regardless of size are within 5 miles of a public water intake?

(b) **Response:** See response to comment # 81. The regulation is not a “government taking” of land. The regulation and the permits are designed to protect air and water quality. With respect to setbacks to public water intakes, this is consistent with the 5 Mile Policy incorporated in by reference in 401 KAR 5:005, Section 29. This policy prohibits discharges 5 miles upstream of a public water intake. The intent of this requirement is to provide sufficient notification time for a downstream intake in the event of a release. The number of livestock operations regardless of size 5 miles or less upstream of a public water intake is not known.

(89) Subject: Siting Criteria

(a) **Comment:** Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Dennis Liptrap, IPKY, Inc

Establish setbacks for land application that are realistic and consistent for all CAFOs.

(b) **Response:** See response to comment # 77 & 82.

(90) Subject: Siting Criteria

(a) **Comment:** Carole Knoblett, Kentucky Poultry Federation
Angela Leach, Farmer
Heather Roe Mahoney, Democracy Resource Center
Charles Shocklee, Farmer
Todd Wright, Complex Environmental Manager, Tyson Foods, Inc.

Existing farms that do not meet the new siting guidelines cannot build a litter storage shed. How does the Cabinet plan to address this issue that has an immediate impact on existing farms? Does the siting criteria apply to all new or expanded barns and lagoons owned or operated by the permittee or on the land where the CAFO is located even though they are not used in connection with the CAFO?

(b) **Response:** See response to comment # 75. For existing poultry operations, it was never the intention of the Cabinet to prohibit permanent litter storage structures from being built where those

operations are currently sited closer than the regulations would otherwise allow. The regulation was clarified to make this distinction more clear.

The regulation only applies to structures and activities on operations defined as CAFOs. Any barn, lagoon, poultry house, litter storage structure, composting site, or waste handling structure directly associated with the confinement of animals, that is located on the farm defined as a CAFO, would be affected. Other structures, activities, or land, not owned or carried out by the permittee which are not located on the same farm as the CAFO, would not be affected by the regulation.

(91) Subject: Siting Criteria

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

During the June 1999 comment period on the Groundwater Protection Plan for Poultry Facilities on less than ten acres, the Cabinet responded to comments by stating that setbacks to roads, schools, and churches do not relate to the protection of groundwater. How do setbacks to roads, schools, churches, and other buildings protect the waters of Kentucky now when they could not in June 1999?

(b) Response: Setbacks to roads, schools, churches, and other buildings are not established for the protection of water quality. Rather, they are established for the protection of air quality as it relates to odor, air toxics, pathogens, and other concerns.

The Cabinet would note that setbacks for these same features are established by the Agriculture Water Quality Plan BMP #17 for poultry operations. The Kentucky Poultry Federation expressed support of the Agriculture Water Quality Plan in its comments made during the public hearings. The Cabinet used these established setbacks as the basis for the majority of the proposed setbacks for poultry CAFOs.

(92) Subject: Siting Criteria

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

The use of setbacks as a surrogate to proper management of odors, airborne toxics, disease-causing organisms and other air contaminants is inappropriate. Setbacks should be required under the KPDES and water quality authority to assure prevention of water pollution and under 401 KAR Chapters 30, 45, and 47 to minimize nuisances, by providing geographic isolation of facilities and their inherent odors and vectors. Setbacks should not be considered a sufficient stand-alone pollution control strategy; there should be a general prohibition of nuisance or water pollution. The National Pork Producer's Association recommends new hog operations be located 1,500 feet from houses and 2,500 feet from schools, hospitals and churches. Research and anecdotal evidence suggests that odors are a problem at far greater distances. More restrictive setbacks have been adopted by other states and localities. The Council also recommends that the Cabinet consider allowing a variance from the setbacks for demonstrated methods of management that result in no nuisance condition or water pollution, and that the Cabinet differentiate in setback requirements between land application by spray irrigation, wet management by incorporation, and dry waste management.

Any setbacks which are directed at preventing nuisance must be crafted so as to fully protect the use and enjoyment of other properties. Assume the most sensitive land uses for adjoining lands and establish setbacks based on the existence of the sensitive land uses at the property boundary.

Appropriate setbacks need to apply to all activities (including land application) conducted after the enactment of the regulations, because there is no pre-existing right to cause water pollution or a nuisance.

(b) **Response:** See response to comments #4.

With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or nuisance ordinances. Neighbors have common law rights concerning nuisance that can also be addressed in the courts.

(93) Subject: Siting Criteria

(a) **Comment:** Chetan Talwalker, Democracy Resource Center
Heather Roe Mahoney, Democracy Resource Center
Liz Natter, Director, Democracy Resource Center
Hank Graddy, Attorney, Sierra Club

Setbacks are not protective enough. The setbacks for dwellings, lakes, streams, rivers, water wells, sink holes and other Karst features which might lead to water wells, should be increased for swine and poultry facilities, including land application. Setbacks to property lines should be applied to swine and poultry facilities. Lagoons should not be allowed to locate in karst topography, the saturated zone, over springs, or in areas where there is a significant likelihood of subsidence due to previous mining activities. Site characterization should be performed.

(b) **Response:** See response to comment # 85. The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to provide protection of air and water quality. With respect to lagoons in karst topography, the regulation does prohibit such over a sinkhole or other enclosed depression where subsidence is evident.

(94) Subject: Siting Criteria

(a) **Comment:** Ann Wilkerson, Retired Teacher
Norma Reynolds
Corrine Whitehead, Coalition for Health Concern

Siting criteria is not adequate to protect neighbors from the odor, flies, dust, and rodents from these operations. Two schools in Hopkins County are well beyond the 1,500 foot setback, yet many days the elementary children are unable to go outside for recess due to the stench created by harmful elements in the air. People and churches near a large poultry operation are unable to enjoy their property, which is their right. Poultry house setbacks should be moved back at least 3,000 feet from a dwelling, church or school and 750 feet from a property line; Swine barns should be at least one mile from a dwelling, church or school; and swine and poultry barns should be 3,000 feet from a river, well, or water source.

(b) **Response:** See response to comment # 85. The Cabinet recognizes the many issues associated with CAFOs, including water pollution, odor, disease, land values, etc. The Cabinet used all of the resources available to determine what setback distances would be reasonable to protect both air and water quality.

(95) Subject: Siting Criteria

- (a) **Comment:** Kathy Lyons
Sue Anne Salmon
Susan Crosswait, Kentuckians for the Commonwealth

Why are setbacks from privately owned water sources such as private wells less than those protecting public water supplies? Rural residents should be afforded the same protections from bad neighbors as city dwellers.

- (b) **Response:** The Cabinet distinguished between water wells and public water supply surface intakes due to the differences in which pollutant transport generally occurs with those respective features. This should not be viewed as a differing level of protection for either rural or urban residents. Rather, the Cabinet intends to afford equal protection among all residents within the Commonwealth.

(96) Subject: Siting Criteria

- (a) **Comment:** Joe Knoepfler
Kathy Lyons
Liz Natter, Director, Democracy Resource Center
Joe Nepi, Doe Valley
Sue Whayne

Setbacks are inadequate to protect private or public properties in rural areas. Increase the setbacks and institute maximum density regulations as soon as possible. Include a narrative standard preventing facilities from creating a nuisance.

- (b) **Response:** See responses to comments #22, 85 and 92. The Cabinet has chosen not to address density of animals allowed. The agency would note that handling of manure in an appropriate manner, both from an agronomic and environmental perspective, will address animal density concerns in many respects. Further, the use of setbacks, deals with other aspects of the density issue. With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or nuisance ordinances.

(97) Subject: Siting Criteria

- (a) **Comment:** Pennie A. DuBarry, Citizen

Please ensure that all setbacks to a dwelling be at least one mile from a hog barn, chicken house or lagoon with more than 1,000 animal units. These siting requirements are the only meaningful protection neighbors have from odor, disease organisms, and flies which can carry disease.

- (b) **Response:** See response to comment # 85.

(98) Subject: Siting Criteria

- (a) **Comment:** Danny Payne

My existing \$110,000 poultry house is within 100 feet of a property line. If a storm blows my poultry house down, will I be able to rebuild where my concrete foundation and leveling of land is already in place?

(b) **Response:** In the event of catastrophic destruction, it would be reasonable to conclude that the operation could be constructed back to its original size without having to adhere to new siting requirements.

(99) Subject: Siting Criteria

(a) **Comment:** Danny Payne

Spreading litter close to a neighbor should only be done once a year and incorporated. Litter could also be spread in the winter when neighbors aren't outside very long. Also, dry litter from storage sheds reduces odor.

(b) **Response:** The Cabinet does not propose to restrict the number of times that poultry litter can be spread. However, the Cabinet will require in the course of permitting when litter cannot be spread, such as when the ground is frozen, saturated, or snow covered. With respect to litter sheds, the Cabinet would agree that permanent litter storage is an excellent method of preventing odor and contaminated storm water runoff from exposed litter.

(100) Subject: Siting Criteria

(a) **Comment:** Ray Barry, Kentucky Conservation Committee
Susan Crosswait, Kentuckians for the Commonwealth

Setbacks in the emergency regulation are not protective of air quality, water quality and disease vectors. They impose unbreathable air on neighbors, allow runoff into streams, and expose the area to fly infestations. We suggest at least one mile from a hog barn or lagoon to a dwelling and 3,000 feet from a chicken CAFO to a dwelling. All CAFOs should be at least 750 feet from the property line. Waste lagoons should not be allowed in floodplains, near sink holes, over known cave and karst systems or close to streams. Setbacks should also be required from land which has manure applied. Density limits should also be imposed.

(b) **Response:** See response to comment #s 85, 93, and 96.

(101) Subject: Siting Criteria

(a) **Comment:** Susan Crosswait, Kentuckians for the Commonwealth

There must be some setback requirements from 500-1,000 animal units. If the Cabinet is to issue General Permits, change the number of animal units to 500-1,000 instead of 1,000-1,500. There should be some requirements for monitoring manure and the soil it is applied to from 50,000 to 100,000 chickens.

(b) **Response:** The regulation addresses CAFOs. It is possible for an operation less than 1000 animal units to be defined as a CAFO if that operation seeks to have a direct discharge of waste to waters of the Commonwealth or is designated such for water quality problems. In that event, the provisions of this

regulation could apply to that operation. It should be noted however, that no CAFO operation has sought to have a direct discharge permit in Kentucky to date.

(102) **Subject: Siting Criteria**

(a) **Comment:** Susan Crosswait, Kentuckians for the Commonwealth

Consider tiering setbacks.

(b) **Response:** The Cabinet has considered tiering of setbacks. Looking at the entire livestock and poultry industry in Kentucky, siting criteria does in fact exist at tiered levels already. For all operations greater than 10 acres in size, the requirements (including setbacks) of the Agriculture Water Quality Plan would apply. For operations that are defined as CAFOs, or generally the largest operations, then the requirements (including setbacks) of the regulation would apply. The Cabinet did not make a distinction between CAFOs of varying size in the regulation.

(103) **Subject: Siting Criteria**

(a) **Comment:** Sue Whayne

Since odors do not stop at the contract grower's property line, setbacks should be three times farther than the regulations stipulate when growers spread manure. The flies and smell are unbearable. Setbacks from dwellings need to be at least 5,000 feet and 800 feet from water wells.

(b) **Response:** See responses to comments # 85, 93, and 96.

(104) **Subject: Siting Criteria**

(a) **Comment:** Alfred O'Reilly, Poultry Farmer

There is no provision for topography or geography. There is no appeal process or format to apply for a variance.

(b) **Response:** Topography or geography would be accounted for during the course of the permitting process. For example, the application of poultry litter on steeply sloped land may be prohibited by the operation's nutrient management plan. Each permit action made by the Cabinet is subject to an appeal process. The regulation also addresses variances from setbacks in Section 3(3)(d).

(105) **Subject: Siting Criteria**

(a) **Comment:** Mark Reding, Kentucky Pork Producers Association

Prior to implementing these setback provisions, the Cabinet should provide mapping that will show all areas affected by the 1-mile and 5-mile setbacks. All landowners in the affected areas should be given written notification of the restrictions being placed on their properties and should be given opportunity to respond.

(b) **Response:** The obligation to comply with permit requirements is the responsibility of the permit holder. The Cabinet will make available any information that we have to help facilitate this compliance.

(106) Subject: Additional Requirements Needed

(a) **Comment:** Tom Fitzgerald, Kentucky Resources Council
Aloma Dew, Sierra Club

The regulations should also include provisions regarding neighbor and public notice, disclosure of compliance history of all owners and controllers, and financial assurance that some funds will be set aside to assure proper closure of the facility and clean-up of any spill or release. There should also be a requirement for maintaining liability insurance to pay any judgments or claims from third parties that a nuisance has been created by the facility, and to pay any third party injury claims or loss of property value.

Appropriate reporting obligations should be imposed as will enable the agency to properly monitor implementation of the law and identify areas of concern. Immediate reporting of any releases, spills, leaks or groundwater contamination should be required. Density controls are needed for the number of animal units in a given area. Zones of use are needed for nutrient laden waters or litter so that the nutrients would be locally produced and locally used. Riparian buffer zones such as constructed wetlands are needed. Redundant nutrient barriers and linings should be required, especially in Karst areas.

(b) **Response:** The existing KPDES regulations already address public notice and compliance matters. The integrator liability provision addresses how the producer and the processing facility are responsible for complying with environmental requirements related to the KPDES permit. With respect to liability insurance, the regulation does not address that issue. Monitoring and reporting will be a condition of any KPDES permit issued.

With respect to density controls, please refer to response to comment # 96. As it relates to riparian buffer zones, constructed wetlands, and similar types of filter strips and buffer zones, those practices are not specifically addressed in the proposed regulation. The Agriculture Water Quality Plan will address some of these aspects as well.

(107) Subject: Additional Requirements Needed

(a) **Comment:** Sue Anne Salmon

The Cabinets regulations are a good starting point, but should be strengthened to include: 1) Clear guidelines on liability for disease or environmental problems be shared by the corporation that contracts with the farmer; 2) Prohibition of using dead or diseased chickens as part of chicken manure fertilizer; 3) Prohibition of mixing sewage sludge with animal manure to use as fertilizer; 4) Clear guidelines on methods and frequency of animal waste fertilizer application; 5) Prohibition of feeding animal waste to other animals; 6) Setbacks that are based on odor detection by neighboring residents, schools, churches or businesses; 7) Enforcement of laws that require tarps on all trucks hauling animal waste or dead animals; and 8) Enforcement of truck weight and speed limits for vehicles hauling CAFO products.

(b) **Response:** The regulation addresses integrator liability as it relates to compliance with KPDES permit requirements. The proposed regulation does not expressly prohibit the use of dead or diseased chickens as a fertilizer. The proper disposal of dead animals falls within the jurisdiction of the State

Veterinarian. The regulation does not deal with the use of animal manure and subsequent mixing with sewage sludge. This is addressed by other state and federal regulations. The regulation does not address feeding of animal manure to other animals, since that is beyond the scope of this regulation. See response to comments # 85 and 94 as it relates to setbacks to address odor. The regulation does not address either transportation of dead animals, animal waste, truck weight or speed limits since that is beyond the scope of this regulation.

(108) Subject: Additional Requirements Needed

(a) **Comment:** Liz Natter, Director, Democracy Resource Center

Require monitoring of wastes for disease organisms and reporting of any disease outbreak among swine. Require a plan for treatment to destroy pathogens. Require that waste not be land applied at a rate not exceeding the soil's infiltration rate. Require that waste be applied on a field for a maximum of three out of four years and that soil pH be regulated. Land application should be prohibited in the floodplain and on wetlands. Require filter strips. Prohibit land application of hog waste on crops grown for human consumption. The regulations should take into account the environmental effects of atmospheric nitrogen deposition and consider the aggregate effect of facilities. Site characterization should be performed. Dams smaller than those required to be permitted should be checked for structural integrity.

(b) **Response:** All aspects related to land application of animal waste will be addressed in the course of the KPDES permitting process, rather than in the regulation. Specifically, the Comprehensive Nutrient Management Plan (CNMP), the Agriculture Water Quality Plan, and any applicable NRCS requirements will be evaluated collectively in the development of an appropriate nutrient management plan for a given CAFO operation.

(109) Subject: Additional Requirements Needed

(a) **Comment:** Liz Natter, Director, Democracy Resource Center

Permitting should take into account past performance and current violations of applicants.

(b) **Response:** See response to comment #27.

(110) Subject: Additional Requirements Needed

(a) **Comment:** Liz Natter, Director, Democracy Resource Center

A narrative standard preventing facilities from creating a nuisance by virtue of odor or runoff should be included.

(b) **Response:** With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or nuisance ordinances.

(111) Subject: Additional Requirements Needed

(a) **Comment:** Liz Natter, Director, Democracy Resource Center
Heather Roe Mahoney, Democracy Resource Center

Lagoons will be designed to fail at an unacceptable frequency by allowing a discharge in the case of a 25-year, 24-hour storm. Strict design standards must be put in place to avoid catastrophic failures of lagoons.

(b) **Response:** The Cabinet recognizes the concern, but notes that the 25-year, 24-hour storm event provision is a federal requirement. The Cabinet does not propose to change the federal regulations.

(112) Subject: Additional Requirements Needed

(a) **Comment:** Tom Fitzgerald, Kentucky Resources Council

Standards of Performance, beyond setbacks should be identified, including: siting requirements and setbacks; construction and design requirements for facilities; protection against catastrophic failure, leakage, and odor; characterization of any geological setting proposed for intensive operations or land application of wastes from such operations; liner and seepage standards for lagoons; characterization of wastes and wastewaters for all potential pollutants including disinfectants, pesticides, antibiotics, hormones, heavy metals, and viruses; discussion of chemical reactions associated with waste disposal; evaluation of long-term concentration of salts and metals in soils used for land application; assessment of odors, air pollution, potential for spread of disease, and water pollution; the feasibility of alternative waste and wastewater treatment systems; lagoon design standards including liners and side walls with a design requirement of preventing leakage, and groundwater monitoring or leak detection systems; adequate distance from the base of the lagoon liner to the seasonal high water table; lagoon sizing should be sufficient to accommodate probable maximum precipitation event without failure or overtopping, and to accommodate seasonal demands where land application is inappropriate due to frozen soil or soil saturation; berming that will prevent migration of wastewaters to waters of the Commonwealth in the event of structural failure of the containment; lagoon influent and effluent monitoring; the name and address of the responsible party; designs and calculations for controlling run-on and runoff from all waste storage and disposal areas in order to prevent contamination or pollution of waters of the Commonwealth; standards to address nuisance and health problems associated with worker and public exposure to hydrogen sulfide and ammonia; odor control measures for all phases of the operation; require consideration of separate management of liquids and solids and covered manure storage tanks; landspread wastes and wastewaters should be treated to reduce pathogens prior to land-application; no land application to frozen soil; prohibition of aerial spraying and requirement for immediate incorporation and injection. A requirement should be included that past compliance history of all owners and controllers of the applicant be disclosed.

(b) **Response:** See response to comments#106, 107, and 108. In addition, the Cabinet recognizes the many environmental issues related to CAFOs. However, the Cabinet has chosen to only address certain key aspects in the regulation, while utilizing the federal NPDES program and associated permitting process to deal with the majority of the site specific issues.

(113) Subject: Additional Requirements Needed

(a) **Comment:** Tom Fitzgerald, Kentucky Resources Council

The proposed general permit lacks any provisions addressing the protocol for sampling and lacks baseline information concerning stream water quality necessary to enforce the permit which sets no operational effluent limits but instead relies on a general prohibition against violating instream water quality

requirements. The permits should include a requirement to berm all land application areas to prevent runoff from reaching waters, and a prohibition against any runoff entering waters of the Commonwealth. Upstream and downstream baseline water quality monitoring should be required, and specific requirements for instream monitoring should be imposed to make enforceable the prohibition against worsening water quality.

(b) **Response:** As with all KPDES permits, sampling protocol shall be in accordance with CFR Part 136. The permit does not require instream baseline monitoring as noted. Given the general prohibition and no discharge requirements, the agency has not sought to impose this requirement at this time. The agency has chosen not to require berms on all land application areas due to the impractical nature of requiring such.

(114) Subject: Additional Requirements Needed

(a) **Comment:** Ray Barry, Kentucky Conservation Committee
Susan Crosswait
Pennie A. DuBarry
Kathy Lyons
Heather Roe Mahoney, Democracy Resource Center
Liz Natter, Director, Democracy Resource Center
Aloma Dew, Sierra Club

Groundwater monitoring should be required, especially for hog lagoons. Monitoring should establish background levels. Monitoring should include bacterial contamination. Results should be submitted to the Cabinet and available to the public.

(b) **Response:** Permit requirements are designed to prevent groundwater contamination. The imposition of groundwater monitoring was not deemed necessary for purposes of these general permits. Any results submitted to the agency are available to the public through the open records act.

(115) Subject: Additional Requirements Needed

(a) **Comment:** Kathy Lyons
Corrine Whitehead, Coalition for Health Concern

The Cabinet should require waste treatment facilities similar to municipal sewage treatment plants.

(b) **Response:** The Cabinet disagrees that a conventional municipal “wastewater treatment plant” should be mandated for manure management. This would preclude the beneficial reuse of the manure. See response to comment # 25.

(116) Subject: Additional Requirements Needed

(a) **Comment:** Ray Barry, Kentucky Conservation Committee
Susan Crosswait
Pennie A. DuBarry
Joe Nepi, Doe Valley
Sue Whayne

Heather Roe Mahoney, Democracy Resource Center
Aloma Dew, Sierra Club

CNMPs should be required upon request for a permit for a CAFO. Manure management plans should be required, including analyses of nitrogen, phosphorous and heavy metals of the land on which the manure is applied. Test results should be available to the public.

(b) **Response:** See response to comment #38.

(117) Subject: Additional Requirements Needed

(a) **Comment:** Bernadine Edwards

I live within two miles of 82 chicken houses. In the summertime it smells every day and I have dust and feathers from the chicken houses. They cleared every tree and never sowed grass. The ditch they dug is going to have to be dug out again. Manure is not covered when hauled. Manure and dead chickens lie along the roads and chicken trucks make our small roads unsafe. Tax money gained from the chicken industry is not enough to fix the roads.

(b) **Response:** The Cabinet notes the comment. Odors are addressed via setbacks. Dead animal disposal falls under the jurisdiction of the State Veterinarian. Road safety and repair falls under the jurisdiction of the Transportation Cabinet.

(118) Subject: Additional Requirements Needed

(a) **Comment:** Barbara Thomas

Restrict spreading, stockpiling and storage buildings from waterways. Find out how to control the pollution before more pollution is created. Too many houses too close together will cause water pollution. Our water in the Beech Grove area has had to be changed because of the poultry industry needing water. Make the poultry industry responsible for the clean up of this pollution.

(b) **Response:** The setbacks contained in the permits are designed to restrict access to waterways. The Cabinet is aware of water supply issues relative to poultry demands. However, that is not a part of this permitting action, but rather the water withdrawal permitting program. The permit holder is held responsible for the pollution it creates and can be fined in direct proportion to environmental damage done.

(119) Subject: Additional Requirements Needed

(a) **Comment:** Barbara Thomas
Karol Welch
Richard E. Shore, Legislative Agent, Kentucky Conservation Committee
Aloma Dew, Sierra Club

Too many houses too close together will cause water pollution. Large concentrations of animals will invite new diseases. Density requirements are needed.

(b) **Response:** See response to comment #96. Disease issues are regulated by the State Veterinarian pursuant to state statute KRS Chapter 257.

(120) Subject: Additional Requirements Needed

(a) **Comment:** Richard E. Shore, Legislative Agent, Kentucky Conservation Committee

Require zones of use designating application of nutrient laden waters or litter produced from each single CAFO. Holding and storage areas for both solid and liquid nutrient laden materials need redundant barriers (secondary containment).

(b) **Response:** The function of the CNMP is to control the use of waste nutrients from each individual CAFO. The agency has chosen not to require secondary containment for animal waste storage areas.

(121) Subject: Additional Requirements Needed

(a) **Comment:** Richard E. Shore, Legislative Agent, Kentucky Conservation Committee

Require riparian buffers down slope from CAFO lagoons and litter piles to protect streams and groundwater from viruses, bacteria, protozoa, nutrients, and toxic chemicals.

(b) **Response:** Siting requirements address this concern. In addition, the requirement for permanent litter storage is designed to mitigate many of the concerns related to improper litter handling.

(122) Subject: Additional Requirements Needed

(a) **Comment:** Aloma Dew, Sierra Club

Include the enforcement of tarp laws to prevent manure/litter spills in ditches and on roadways where the runoff will affect our waters.

(b) **Response:** The permit does not address either transportation of dead animals, animal waste, truck weight or speed limits since that is beyond the scope of this permit.

(123) Subject: Additional Requirements Needed

(a) **Comment:** Aloma Dew, Sierra Club

The incorporation of litter and manure needs clear requirements. Spraying and spreading litter without incorporating it is a sure threat to water quality. Care should be taken to keep it out of ditches, off frozen fields, include chain of custody and a written agreement signed by the hauler that he or she knows the regulations and abides by them.

(b) **Response:** The CNMP plan and BMPs required by the permit addresses all aspects of manure spreading and are designed to prevent incorrect spreading methods. Once the manure or litter leaves the permitted facility, the CNMP requires that the manure be accounted for.

(124) Subject: Additional Requirements Needed

(a) **Comment:** Hank Graddy, Sierra Club

The Sierra Club demands a nationwide moratorium on all new CAFOs, a prohibition on all new liquid waste lagoons for CAFOs and a phase out of all existing liquid waste lagoons for existing CAFOs.

(b) **Response:** The Cabinet has determined that a moratorium is not warranted at this time.

(125) Subject: Siting Criteria

(a) **Comment:** Kathy Lyons
Sue Anne Salmon
Susan Crosswait, Kentuckians for the Commonwealth

Why are setbacks from privately owned water sources such as private wells less than those protecting public water supplies? Rural residents should be afforded the same protections from bad neighbors as city dwellers. The permits are discriminatory and therefore unconstitutional.

(b) **Response:** The Cabinet distinguished between water wells and public water supply surface intakes due to the differences in which pollutant transport generally occurs with those respective features. This should not be viewed as a differing level of protection for either rural or urban residents. Rather, the Cabinet intends to afford equal protection among all residents within the Commonwealth.

(126) Subject: Siting Criteria

(a) **Comment:** Ray Barry, Kentucky Conservation Committee

Anyone who purchases or accepts manure should be held to the same standards of management as the generator including setbacks.

(b) **Response:** See response to comment #80. The general permits are for CAFO operations only and do not cover each individual purchaser of manure.

(127) Subject: Best Available Control Technology

- (a) **Comment:** Tom Fitzgerald, Kentucky Resources Council

No new facilities relying on anaerobic lagoons and landfarming wastes or wastewaters should be allowed for intensive hog production operations. Aerobic treatment of wastes is available and preferable from an emission and odor standpoint. For any new proposed facility, the applicant should be required to utilize the best available control technology, including aerobic systems such as oxidation ditches, aerated storage tanks, and aerated lagoons, or other systems to maintain manure in an aerobic condition; or a controlled anaerobic digester with gas treatment.

- (b) **Response:** The Cabinet has chosen not to address this issue in the regulation. EPA is currently in the process of evaluating treatment technologies for CAFOs nationwide and will update the effluent guidelines for that category of operations in the future. Current BAT under 40 CFR 412.13 requires that there, "... be no discharge of process waste water pollutants to navigable waters." The federal guideline does not, however, dictate the type of technology that must be utilized to achieve that standard.

(128) Subject: Dead Animals

- (a) **Comment:** Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
Aloma Dew, Sierra Club
Norma Reynolds
Hank Graddy, Attorney, Sierra Club

Dead animals must be addressed in the regulation. In the past, operators have burned dead chickens and stored dead chickens in barrels. This is a health issue. Who pays for the problems?

- (b) **Response:** Dead animal issues are regulated by the State Veterinarian pursuant to state statute KRS Chapter 257.

(129) Subject: Litter Storage Facility

- (a) **Comment:** Jerry Whitledge, Farmer
Donnie Duncan, Pastor & Chicken Farmer
Angela Leach, Farmer
Meldrum Harvey, Retired Physician & Farmer
Richard Mattingly, Farmer
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Loraine Buckingham, Farmer
Charles Shocklee, Farmer
Jerry Lock, Farmer

Building a six-month litter storage facility will cost 25 to 30 thousand dollars, as much as 65 thousand. Permanent litter storage is already included in the state Agriculture Water Quality Plan. If it is necessary, farmers need time to complete these facilities and cost-share money or financing.

(b) **Response:** The Cabinet recognizes the additional cost of building a permanent litter storage structure. However, the Cabinet also believes that proper waste handling is essential for the protection of human health and the environment. The ancillary benefits of retaining the nutrient value of the litter and easing the litter handling and cleanout aspects are also noted.

The Cabinet would also note that additional cost-share dollars were added during the legislative session this year. For further information about the availability of cost-share funds, please contact the Division of Conservation with the Cabinet.

With respect to the requirements of the Agriculture Water Quality Plan, several commentors indicated that permanent litter storage is already a requirement of the Plan, which requires implementation by October 2001. The Cabinet concurs that permanent litter storage should be required and that time is necessary for operations to come into compliance with this requirement. As such, the regulation has incorporated the Agriculture Water Quality Plan implementation date of October 2001 as the construction deadline for permanent litter storage structures at poultry CAFOs.

(130) Subject: Litter Storage Facility

(a) **Comment:** Tim Hughes, Producer
Meldrum Harvey, Retired Physician & Farmer

Litter storage on the ground is safe if it's properly located and constructed. Regulations don't permit this. I cannot afford to build a litter storage building. Please list the number of manure application violations that have occurred in Kentucky over the past ten years. Please provide the scientific evidence that proves the need for these facilities.

(b) **Response:** See response to Comment # 129. Many commentors stated in both verbal and written comments that permanent litter storage is already a requirement of the Agriculture Water Quality Plan. The Cabinet has inspected and recorded numerous instances where litter was being stored outside causing environmental problems and public complaints. With respect to the scientific evidence, there is ample evidence that litter stockpiled outside, exposed to rainfall, results in greater environmental problems than if stored under cover.

(131) Subject: Litter Storage Facility

(a) **Comment:** Carla J. Creasey, Poultry Farmer

We have no funds for a litter storage facility. It is useless to us since we make arrangements for litter disposal prior to removing it from the barns.

(b) **Response:** In the event that litter is never stored onsite outside of the poultry house, a permanent litter storage structure would not be required.

(132) Subject: Litter Storage Facility

(a) **Comment:** Alvin Sandefur, Farmer

Spreader and truck traffic is greatly increased if the material is not allowed to be hauled directly from the poultry houses to the use sites.

(b) **Response:** There is no prohibition against hauling litter directly to the use sites. If hauled to the field on a CAFO operation and stored there, then it must be stored in accordance with the KPDES permit. If hauled to the field on another agricultural operation, then it must be stored in accordance with the Agriculture Water Quality Plan.

(133) Subject: Litter Storage Facility

(a) **Comment:** Mark Redding, President, Kentucky Pork Association

What is the basis for the requirement for permanent litter storage for poultry CAFOs?

(b) **Response:** See response to comment #s 129 and 130.

(134) Subject: Poultry Litter as an Organic Fertilizer

(a) **Comment:** David Herron, Pilot & Poultry Farmer

How much litter can farmers spread per acre?

(b) **Response:** The application rate of poultry litter will vary depending upon a variety of factors. Soil and manure nutrient content must be known to prevent the application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and prevent pollution. Among other factors, the use of commercial fertilizers must be factored into the application rate. In some instances, the addition of poultry litter may be prohibited altogether as a result of Natural Resource Conservation Service (NRCS) standards and specifications. Each farm will need to be evaluated on a case by case basis.

(135) Subject: Animal Waste as an Organic Fertilizer

(a) **Comment:** Bud Hixson, Kentucky Waterways Alliance

The Cooperative Extension Services publications IP-56 and AGR-168 have identified some counties where animal waste nutrient supplies a high percentage of the crop needs of phosphorus, yet all of the animal waste is not being properly distributed. The Kentucky agricultural statistics must begin to report animal waste as a farm side product.

(b) **Response:** The Cabinet notes the comment and directs the commentor to the Department of Agriculture for further consideration.

(136) Subject: Animal Waste as an Organic Fertilizer

(a) **Comment:** Tom Fitzgerald, Kentucky Resources Council
Dot Holbrook, Resident
Debby Allen
Aloma Dew, Sierra Club
Joan Denton, Sierra Club & KFTC

Sue Whayne
Ann Wilkerson, Kentuckians for the Commonwealth

Animal waste is a natural resource and in excessive quantities it is a pollutant. When more litter is applied than is needed, nutrients can contaminate surface and groundwater. Match the nutrient content of the waste to the nutrient needs of the soil or the crops that are being grown. The University of Kentucky recommends that litter only be applied every other year. Manure management plans and groundwater monitoring should be required. How is the spreading of poultry manure being monitored? Who says it's time to stop? Where are the safeguards?

(b) **Response:** See response to comment #134. An operation which is defined as a CAFO will be required to obtain a KPDES permit for that operation. As a part of that permit, the operation will be required to develop a Comprehensive Nutrient Management Plan (CNMP) for the management of animal waste generated and handled on that operation. That would include monitoring. The Cabinet is responsible for enforcement and compliance oversight with the permit conditions.

(137) Subject: Animal Waste as an Organic Fertilizer

(a) **Comment:** Aloma Dew, Sierra Club

Who has ownership and responsibility of the litter after it leaves the grower?

(b) **Response:** The ownership and responsibility of the litter after it leaves the grower would fall to the individual who is subsequently in control of that litter. The CAFO need only to record when litter leaves the operation. The handling of that litter is to be done in accordance with the Agriculture Water Quality Plan, in addition to any applicable state regulatory requirement.

(138) Subject: Animal Waste as an Organic Fertilizer

(a) **Comment:** Monroe Rasnake, Extension Agronomy Specialist, University of Kentucky
Alan Lutz, Swine Farmer
Meldrum Harvey, Retired Physician, Farmer
Angela Leach, Poultry Farmer
David Herron, Pilot & Poultry Farmer
Donnie Duncan, Poultry Grower
Richard Mattingly, Farmer
Glenda Preston, Farmer

Millions of acres of pasture land in Kentucky would benefit greatly from the nutrients contained in Manure. The availability of manure may make it economically feasible now for farmers to fertilize pasture fields, making them more productive and improving the quality of soils, improving water infiltration and reducing the risk of soil erosion. Perhaps an alternative in some of the setbacks is a reduced frequency of application. Use of animal manure is an economical, environmentally sound practice when using best management practices.

(b) **Response:** See response to comment #141. The Cabinet concurs that the proper use of animal manure is an economical and environmentally sound practice when using best management practices.

Among these BMPs should be setbacks. The requirement of setbacks is also consistent with both Agriculture Water Quality Plan BMPs and NRCS specifications regarding the same.

(139) Subject: Animal Waste as an Organic Fertilizer

(a) **Comment:** Alvin Sandefur, Farmer

I can be much better steward of the land and water by spreading on dry land at 40 days from stacking rather than being forced to spread on wet land at 30 days and risk surface runoff.

(b) **Response:** The Cabinet agrees that the application of manure on dry land is better environmentally than application on wet land. To that end, the Cabinet is not proposing or forcing any operation to spread manure on wet land. The requirement for permanent litter storage, for example, provides for a greater degree of flexibility in land application than does stockpiling of litter outside.

(140) Subject: Animal Waste as an Organic Fertilizer

(a) **Comment:** Kenneth Lee

I want farmers to prosper, but I oppose spreading manure. It should be injected to manage the odor.

(b) **Response:** The Cabinet is not proposing to mandate that all manure be injected. The Cabinet does recognize the use of this land application method in the setbacks however. Certainly odor concerns are greatly mitigated in this manner.

(141) Subject: Poultry Litter as an Organic Fertilizer

(a) **Comment:** Greg Henson, McLean County Extension Agent

I am conducting a project entitled "Implementation and Demonstration of BMPs for the Utilization of Poultry Litter in the Lower Green River Watershed." Our preliminary conclusions are: 1) There was no appreciable difference in runoff from manure versus conventionally fertilized fields; 2) There was no clear trend in fecal bacterial levels where manure was used compared to conventionally fertilized fields; 3) There was no apparent trend in nutrient content of runoff when compared to different rates of manure; and 4) Higher levels of nutrient runoff were related to soil erosion. These results clearly indicate that nutrient content of animal manure is equal to conventional fertilizer. Good farming practices which conserve soil are the most important way to protect water quality.

(b) **Response:** The Cabinet agrees that good farming practices which conserve soil are a very important means of protecting water quality. Providing buffers or filter strips are similarly necessary to prevent the migration of excess nutrients into waters of the Commonwealth. Restricting application of manure around streams, sinkholes, and other waterbodies, by way of setbacks, are also necessary requirements to prevent degradation to waters of the Commonwealth.

Comments from EPA

- (1) (a) **Comment:** The cover sheet should specify that the permit covers the confinement, storage, handling areas, and land application areas under the control of the permittee. In addition, although the permits appear to incorporate by reference the sizes of operations that are classified as CAFOs, it would improve the clarity to provide in the permit the numbers of animal units and other criteria used to determine eligibility for coverage.
- (b) **Response:** The changes have been made as suggested.
- (2) (a) **Comment:** The explanatory sentences in the fact sheet describing which operations are not covered by the general permit should be incorporated into the permit.
- (b) **Response:** The permits have been changed accordingly.
- (3) (a) **Comment:** It would be less confusing if Sections A and B of Part I were not *both* entitled Effluent Limitations and Monitoring Requirements.
- (b) **Response:** The headings have been changed.
- (4) (a) **Comment:** The wording of the following sentence could be misconstrued to indicate that discharges are allowed in trace amounts: “There shall be no discharge of floating solids or visible foam or sheen in other than trace amounts.”
- (b) **Response:** The sentence has been removed.
- (5) (a) **Comment:** The table on page I-2 is confusing and unclear and should be replaced with language that simply describes the monitoring requirements for the effluent characteristics.
- (b) **Response:** The change has been made.
- (6) (a) **Comment:** The notification stipulation for spills and discharges in item 6, “by the most rapid means available” is vague. Specific provisions should be added.
- (b) **Response:** Specific provisions for notification have been added as suggested.
- (7) (a) **Comment:** The relationship between the BMP Plan based on the Ag Water Quality Plan and the CNMP based on NRCS guidelines needs to be clarified.
- (b) **Response:** See response to comment #38.
- (8) (a) **Comment:** The requirement to have the BMP Plan in place “as soon as possible” is too vague. A specific time frame, such as six months after notification of coverage is needed to assure that a BMP Plan is developed and implemented.
- (b) **Response:** See response to comment #38.

- (9) (a) **Comment:** The permit must reference EPA authority, specifically regarding inspection and enforcement issues.
- (b) **Response:** The permits already address these topics by incorporating by reference, 401 KAR 5:065, Section 1 which lists all of the standard conditions applicable to all KPDES permits. This reference is located in Part II.A. of each permit.
- (10) (a) **Comment:** The use of the term “non-process wastewater” which is defined in the permits as runoff from land application areas is not acceptable because it implies that this wastewater is different from process wastewater defined in the second footnote and therefore possibly not subject to the prohibition against discharging from land application areas.
- (b) **Response:** For clarification, the term non-process wastewater has been removed from the permits. The permits now require that there be no discharge of process wastewater from the facility, including from land application areas. Process wastewater is defined in 40 CFR Part 412.
- (11) (a) **Comment:** The permit must contain a minimum set of standards designed to achieve the objective of preventing discharges to waters of the US from CAFOs and from land application activities under the operational control of the CAFO. The comment then lists the minimum standards which should be included.
- (b) **Response:** The standards, as listed, have been added to the permit (see Part II-B).
- (12) (a) **Comment:** The permit must contain provisions for proper closure of lagoons, earthen basins, or other manure and wastewater facilities.
- (b) **Response:** We agree with the comment and have added such a provision.
- (13) (a) **Comment:** The language addressing common ownership should be changed to include not only adjoining facilities but facilities which share a common area or system for the disposal of waste.
- (b) **Response:** The change has been made as suggested.
- (14) (a) **Comment:** EPA encourages the Cabinet to include dry manure management operations in the CAFO permit for poultry operations. Currently, these operations are not directly covered in the definitions of 40 CFR. However, they are indirectly addressed by current regulations because EPA considers those dry systems that have outdoor stacking of litter to be wet systems under certain conditions. In addition, EPA is considering revisions to the regulations to reflect changes in the poultry industry and to ensure proper land application practices.
- (b) **Response:** Any operation of greater than 100,000 birds is classified as a CAFO and must obtain a permit.